Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

CASE No. 80-322

UNITED STATES SUPREME COURT

1979 Term

STEPHEN PAUL KORN
Defendant/Appellant

-v-

THE STATE OF OHIO
Plaintiff/Appellee

ON APPEAL FROM THE
SUPREME COURT FOR
THE STATE OF OHIO

JURISDICTIONAL STATEMENT

Stephen Paul Korn
Defendant/Appellant
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1-313-353-1240

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QUESTIONS PRESENTED BY THE APPEAL

1. Whether R.C. 1901.24, R.C. 2938.04, R.C. 2945.17, Rule 23(A) of the Ohio Rules of Criminal Procedure, Article I-Section 5, Article I-Section 10, and Article I-Section 16 of the Constitution for the State of Ohio, violate the language and spirit of the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, and Article III-Section 2 of the Constitution for the United States, to the extent that they sanction a criminal trial in the State of Ohio to proceed without insuring absolute safeguards of fundamental fairness for the accused, to guard and protect against arbitrary and tyrannical rule, as demonstrated in the case at bar, to wit:

A) allowing a criminal trial to proceed in the absence of a jury, and absent an absolute right to a record of the proceedings in the trial court;

B) allowing a criminal trial to proceed in the absence of a jury, without the accused having been advised of any Constitutional rights, statutory rights, or rights pursuant to Ohio Court Rules;

C) allowing a criminal trial to proceed in the absence of a jury, without the accused having been advised of his right to Counsel, nor offered the assistance to procure the same, if necessary.

2. Whether Rule 22 of the Ohio Rules of Criminal Procedure, ArticleI-Section 5, Article I-Section 10, and Article I-Section 16 of the Constitution for the State of Ohio,

violate the language and spirit of the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, to the extent that they sanction a criminal trial in the State of Ohio to proceed without insuring absolute safeguards for the accused against arbitrary and tyrannical rule, as demonstrated in the case at bar, to wit:

allowing a criminal trial to proceed in the absence of a jury, and absent an absolute and unconditional right to a record of the proceedings in the trial court.

3. Whether Rule 9 and Rule 10 of the Ohio Rules of Appellate Procedure, Rule 3 of the Local Rules for the Third District Court of Appeals, Article I-Section 5, Article I-Section 10, and ArticleI-Section 16 of the Constitution for the State of Ohio, violate the language and spirit of the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, to the extent that they sanction a criminal trial in the State of Ohio to proceed without insuring absolute safeguards for the accused against arbitrary and tyrannical rule, as demonstrated in the case at bar, to wit:

A) allowing a criminal trial to proceed in

the absence of a jury, and absent an absolute and unconditional right to a record of the proceedings in the trial court;

B) puting the Defendant/Appellant to the cumbersome burden, expense, and prejudice of having to recollect and recreate the proceedings in the lower court, and to the further prejudice of establishing their credibility to the "Trial Judge" for "Settlement and Approval", and thereafter to the reviewing Court of Appeals;

C) allowing the trial judge to prepare an unfair, biased, partial, "Settlement and Approval of the Statement of Evidence and Proceedings, and the Objections thereto", precluding and denying the accused of the right to a fair and effective appeal;

D) denying the Defendant/Appellant the absolute and unconditional right to file his Statement of Evidence and Proceedings with the Court of Appeals, wherein the Trial Court's Settlement and Approval, and the State of Ohio's Objections to the Defendant/Appellant's Statement have been filed, avoiding any semblance of fairness or propriety;

E) denying the Defendant/Appellant the absolute and unconditional right to have the Trial Court's Settlement and Approval of the Defendant's Statement of Evidence and Proceedings, and the Objections thereto of the Appellee, conform to the documents submitted by the Appellant and Appellee, so as to give, even the appearance of fairness and propriety, with respect to an impartial and effective appeal.

4. Whether Rule 44 of the Ohio Rules of Criminal Procedure, Article I-Section 10, and Article I-Section 16 of the Constitution for the State of Ohio, violate the language and spirit of the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, to the extent that they sanction a criminal trial in the State of Ohio to proceed without insuring absolute

safeguards of fundamental fairness for the accused, to guard and protect against arbitrary and tyrannical rule, as demonstrated in the case at bar, to wit:

A) failing to advise the accused of any Constitutional Rights pursuant to the Constitution for the State of Ohio or pursuant to the Constitution of the United States, Statutory Rights of the State of Ohio, or Rights pursuant to Ohio Court Rules, designed to insure that an accused be afforded a just and fair hearing, while the accused stood before the Court alone, in the absence of a jury, and in the absence of a trial record;

B) failing at any time to advise the accused, standing before the Court alone, of his right to Counsel, or offering the assistance of Counsel.

5. Whether the Third District Court of Appeals for the State of Ohio committed prejudicial and reversible error in failing at any time to advise the accused, standing before the Third District Court of Appeals alone, of his right to Counsel, or offering the assistance of Counsel, in violation of the Fourteenth Amendment to the Constitution of the United States.

6. Whether the Supreme Court for the State of Ohio committed prejudicial and reversible error in failing at any time to advise the accused, standing before the Supreme Court for the State of Ohio alone, of his right to Counsel, or offering the assistance of Counsel, in violation of the Fourteenth Amendment to the

Constitution of the United States.

7. Whether the Third District Court of Appeals for the State of Ohio committed prejudicial and reversible error in failing to disqualify themselves from the case at bar, and rendering a judgment in the above entitled cause, when the impartiality of the tribunal of the Third District Court of Appeals for the State of Ohio was challenged in an Affidavit of Disqualification filed with the Court and with Chief Justice Frank D. Celebreeze of the Ohio State Supreme Court, pursuant to the Ohio Code of Judicial Conduct, seven months before the final disposition in that Court, and the issue of the impartiality of the judiciary of the Third District Court of Appeals for the State of Ohio having never been addressed by the members of that Appellate Court or the members of the Ohio State Supreme Court, denying the Defendant/Appellant a requisite of Due Process, to wit, "a fair tribunal", in violation of the Fourteenth Amendment to the Constitution of the United States.

8. Whether Article I-Section 16 of the Constitution for the State of Ohio violates the language and spirit of the Fifth, Sixth, and Fourteenth Amendments to the Constitution

of the United States, to the extent that it sanctions a criminal trial in the State of Ohio to proceed without insuring absolute safeguards for the accused against arbitrary and tyrannical rule, as demonstrated in the case at bar, to wit:

taking judicial notice of the reliability and accuracy of radar units, and particularly the M.R.-7, violating evidential principles of what a trial court may properly take judicial notice of; and further denying the accused the right to confront and challenge the credibility and reliability of the evidence offered by the Prosecution, violating all notions of fundamental fairness as set forth in the Due Process of Law provision of the Fourteenth Amendment to the Constitution of the United States.

9. Whether the Courts for the State of Ohio denied the Defendant/Appellant the Equal Protection under the laws of the United States in violation of the Fourteenth Amendment to the Constitution of the United States, and in violation of the Privileges and Immunities Clause of the United States Constitution.

10. Whether the Courts for the State of Ohio erred in finding the Defendant/Appellant guilty against the weight of the evidence, and affirming the conviction on a "silent record, within the meaning of Due Process of Law, as set forth in the Fourteenth Amendment to the Constitution of the United States.

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16. Ohio v. Gartana, 44 Ohio App.2nd 233, page 40;

17. Ohio v. Shelt, 46 Ohio App.2d 115, 346 N.E.2d 345, (1976), page 63;

18. Ohio v. Staggs, Unreported Hancock County Case No. 5-76-18, (1977), pages 36, 46;

19. Powell v. Alabama, 287 U.S. 45, (1932), page 58;

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21. Scott v. Illinois, U.S., 99 SCt. 1158, page 43;

22. Williams v. Oklahoma City, 395 U.S. 458, (1969), page 56;

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Legal Encyclopedia:

1. 16 Am Jur.2nd 990, Constitutional Law, §584,
page 42;

Legal Dictionary

1. Ballentine's Law Dictionary, Third Edition, (1969),
633,
page 43;

Speech of Patrick Henry

1. March 23, 1775, before the second Virginia
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page 64, 65;

JUDICIAL OPINIONS

On June 20, 1980, the Supreme Court for the State of Ohio issued an order dismissing the above entitled cause indicating that no constitutional question exists herein. No official or unofficial reports of any opinions delivered by the Supreme Court for the State of Ohio exist, to the information of this Defendant/Appellant.

On March 4, 1980, the Third District Court of Appeals for the State of Ohio issued a Memorandum Opinion in the above entitled cause. No official or unofficial reports of any opinions delivered by the Third District Court of Appeals for the State of Ohio exist, to the information of this Defendant/Appellant.

On March 14, 1979, the Judgment Entry of the Trial Court was entered after approval by the representative for the State of Ohio. On April 6, 1979, the Trial Court submitted its "Settlement and Approval of the Appellant's Statement and Appellee's Objections" to the Third District Court of Appeals for review, the same taking the form of a judicial opinion. No official or unofficial reports of any opinions delivered by the

Trial Court for the Marion County Municipal Court in the State of Ohio exist, to the information of this Defendant/Appellant.

JURISDICTIONAL GROUNDS

This proceeding is a Due Process challenge to the many procedural violations of fundamental fairness in the State of Ohio with respect to the disposition of "petty offenses." This proceeding is framed and termed as an appeal for the reason that many statutes and court rules of the State of Ohio have been challenged as repugnant to the Constitution and laws of the United States, both in the Appellate Court, and in the Supreme Court for the State of Ohio, and the decision of those Courts in failing to disaffirm the specified statutes and court rules of the State of Ohio rendered a decision in favor of their validity.

On June 20, 1980, the Supreme Court for the State of Ohio entered an order dismissing the above entitled cause for the reason that "no substantial constitutional question exists herein." The appeal to the Ohio State Supreme Court was taken from the Third District Court of Appeals for the State of Ohio which rendered its judgment on March 4, 1980. The Notices of Appeal in this proceeding to the United

States Supreme Court were filed on August 19, 1980, in the Third District Court of Appeals for the State of Ohio, in the Supreme Court for the State of Ohio, and in the United States Supreme Court, pursuant to Rule 28.2 of the Rules of the Supreme Court of the United States.

The statutory provision believed to confer jurisdiction of the appeal on the United States Supreme Court is 28 U.S.C §1257(2). Consistent therewith, this appeal is filed according to the time frame set forth in Rule 11.1 of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL PROVISIONS, STATUTES, OF THE CASE

United States Constitutional Provisions

U.S. CONST. art. III, §2

> The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

U.S. CONST. fifth amend.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the Militia when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. sixth amend.

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

State of Ohio Constitutional Provisions

OHIO CONST. art. I, §5

Trial by jury; reform in civil jury system. The right of trial by jruy shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

OHIO CONST. art. I, §10

Trial of accused persons and their rights; depositions by state and comment on failure of accused to testify in criminal cases. Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made be law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the

of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

OHIO CONST. art. I, §16

Redress in courts.

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay

Suits against the state.

Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

State of Ohio Rules of Criminal Procedure

Rule 22 of the Ohio Rules of Criminal Procedure

Recording of Proceedings

In serious offense cases all proceedings shall be recorded.

In petty offense cases all waivers of counsel required by Rule 44(B) shall be recorded, and if requested by any party all proceedings shall be recorded.

Proceedings may be recorded in shorthand, or stenotype, or by any other adequate mechanical, electronic or video recording device.

Rule 23 of the Ohio Rules of Criminal Procedure

Trial by Jury or by the Court

(A) Trial by jury.

In serious offense cases the defendant before commencement of the trial may knowingly,

intelligently and voluntarily waive in writing his right to trial by jury. Such waiver may also be made during trial with the approval of the court and the consent of the prosecuting attorney. In petty offense cases, where there is a right of jury trial, the defendant shall be tried by the court unless he demands a jury trial. Such demand must be in writing and filed with the clerk of court not less than ten days prior to the date set for trial, or on or before the third day following receipt of notice of the date set for trial, whichever is later. Failure to demand a jury trial as provided in this subdivision is a complete waiver of the right thereto.

Rule 44 of the Ohio Rules of Criminal Procedure

Assignment of Counsel

(A) Counsel in serious offenses.
Where a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent him at every stage of the proceedings from his initial appearance before a court through appeal as of right, unless the defendant, after being fully advised of his right to assigned counsel, knowingly, intelligently, and voluntarily waives his right to counsel.

(B) Counsel in petty offenses.
Where a defendant charged with a petty offense is unable to obtain counsel, the court may assign counsel to represent him. When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon him, unless after being fully advised by the court, he knowingly, intelligently, and voluntarily waives assignment of counsel.

(C) Waiver of counsel. Waiver of counsel shall be in open court and the advice and waiver shall be recorded as provided in Rule 22. In addition, in serious offense cases the waiver shall be in writing.

(D) Assignment procedure. The determination of whether a defendant is able or unable to obtain counsel shall be made in a recorded proceeding in open court.

State of Ohio Rules of Appellate Procedure

Rule 9 of the Ohio Rules of Appellate Procedure

The record on appeal

(A) Composition of the record on appeal. The original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases. A videotape recording of the proceedings constitutes the transcript of proceedings other than hereinafter provided, and, for purposes of filing, need not be transcribed into written form. Proceedings recorded by means other than videotape must be transcribed into written form. When the written form is certified by the reporter in accordance with App. R. ((B), it shall constitute the transcript of proceedings. When the transcript of proceedings is in the videotape medium, counsel shall type or print those portions of such transcript necessary for the court to determine the questions presented and append such copy of the portions of the transcripts to their briefs.

In all capital cases the trial proceedings shall include a written transcript of the record made during the trial by stenographic means.

(B) The transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered.

At the time of filing the notice of appeal the

appellant shall in writing order from the reporter a complete transcript or a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record and shall file a copy of said order with the clerk. The reporter is the person appointed by the court to transcribe the proceedings for the trial court whether by stenographic, phonogramic or photographic means, or by the use of audio electronic recording devices, or by the use of audio electronic recording devices, or by the use of video recording systems. If there be no officially appointed reporter, Rule 9(C) or 9(D) may be utilized. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, he shall include in the record a transcript of all evidence relevant to such findings or conclusion. Unless the entire transcript is to be included, or if no transcript is necessary, or if a statement pursuant to either Rule 9(C) or 9(D) is to be prepared in lieu of a transcript, the appellant shall, with his notice of appeal, file with the clerk of the trial court and serve on the appellee a description of the parts of the transcript which he intends to include in the record or a statement that no transcript is necessary or that a statement pursuant to either Rule 9(C) or 9(D) will be submitted, and a statement of the assignments of error he intends to present on the appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary he shall, within ten days after the service of the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. The clerk of the trial court shall forward a copy of this designation to the clerk of the Court of Appeals.

If the appellant shall refuse, or fail within

ten days after service upon him of appellee's designation, to order such parts, the appellee within five days thereafter, shall either order the parts in writing from the reporter or apply to the court of appeals for an order requiring the appellant to do so. At the time of ordering, a party shall arrange for the payment to the reporter of the cost of the transcript.

The reporter shall certify the transcript as correct whether in written or videotape form and state whether it is a complete or partial transcript, and, if partial, indicate the parts included and the parts excluded.

If the proceedings were recorded in part by videotape and in part by other media, the appellant shall order the respective parts from the proper reporter and the record is complete for the purposes of appeal when the last such part is filed with the clerk of the trial court.

(C) Statement of the evidence or proceedings when no report was made or when the transcript is unavailable.

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee no later than twenty days prior to the time for transmission of the record pursuant to Rule 10, who may serve objections or propose amendments thereto within ten days after service. Thereupon, the statement and any objections or proposed amendments shall be forthwith submitted to the trial court for settlement and approval. The trial court shall act thereon prior to the time for transmission of the record pursuant to Rule 10, and, as settled and approved, the statement shall be included by the clerk of the trial court in the record on appeal.

(D) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (A) of this rule, the parties may, no later than ten days prior to the time for transmission of the record pursuant to Rule 10, prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary fully to present the issues raised by the appeal, shall be approved by the trial court prior to the time for transmission of the record pursuant to Rule 10, and shall then be certified to the court of appeals as the record on appeal and transmitted thereto by the clerk of the trial court within the time provided by Rule 10.
(E) Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the court of appeals, or the court of appeals, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the court of appeals.

Rule 10 of the Ohio Rules of Appellate Procedure
Transmission of the record

(A) Time for transmission; duty of appellant. The record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the clerk of the court of appeals when the record is complete for the purposes of appeal, or when forty days have elapsed after the filing of the notice of appeal and no order extending time has been granted under subdivision (C). After filing the notice of appeal the appellant shall comply with the provisions of Rule 9(B) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is taken, each appellant shall comply with the provisions of Rule 9(B) and this subdivision, and a single record shall be transmitted when forty days have elapsed after the filing of the final notice of appeal.

(B) Duty of clerk to transmit the record. The clerk of the trial court shall prepare the certified copy of the docket and journal entries, assemble the original papers, (or in the instance of an agreed statement of the case pursuant to Rule 9(D), the agreed statement of the case), and transmit the record upon appeal to the clerk of the court of appeals within the time stated in subdivision (A). The clerk of the trial court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the court of appeals. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the trial court mails or other-

wise forwards the record to the clerk of the court of appeals. The clerk of the trial court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the court of appeals and shall note the transmission on the appearance docket.

The record shall be deemed to be complete for the purposes of appeal under the following circumstances:

(1) When the transcript of proceedings is filed with the clerk of the trial court.

(2) When a statement of the evidence or proceedings, pursuant to Rule 9(C), is settled and approved by the trial court, and filed with the clerk of the trial court.

(3) When an agreed statement in lieu of the record, pursuant to Rule 9(D), is approved by the trial court, and filed with the clerk of the trial court.

(4) Where appellant, pursuant to Rule 9(B), designates that no part of the transcript of proceedings is to be included in the record or that no transcript is necessary for appeal, after the expiration of ten days following service of such designation upon appellee, unless appellee has within such time filed a designation of additional parts of the transcript to be included in the record.

(5) When forty days have elapsed after filing of the last notice of appeal, and there is no extension of time for transmission of the record.

(C) Extension of time for transmission of the record; reduction of time.

Except as may be otherwise provided by local rule adopted by the court of appeals pursuant to Rule 30, the trial court for cause shown set forth in the order may extend the time for transmitting the record. The clerk shall certify the order of extension to the court of appeals. A request for extension to the trial court and a ruling by the trial court must be made within the time originally

prescribed or within an extension previously granted. If the trial court is without authority to grant the relief sought, by operation of this rule or local rule, or has denied a request therefor, the court of appeals may on motion for cause shown extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given. The court of appeals may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

(D) Retention of the record in the trial court by order of court.

If the record or any part thereof is required in the trial court for use there pending the appeal, the trial court may make an order to that effect, and the clerk of the trial court shall retain the record or parts thereof subject to the request of the court of appeals, and shall transmit a copy of the order and of the docket and journal entries together with such parts of the original record as the trial court shall allow and copies of such parts as the parties may designate.

(E) Stipulation of parties that parts of the record be retained in the trial court.

The parties may agree by written stipulation filed in the trial court that designated parts of the record shall be retained in the trial court unless thereafter the court of appeals shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(F) Record for preliminary hearing in the

court of appeals.
If prior to the time the record is transmitted a party desires to make in the court of appeals a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the trial court at the request of any party shall transmit to the court of appeals such parts of the original record as any party shall designate.
(G) Transmission of the record when leave to appeal obtained.
In all cases where leave to appeal must first be obtained all time limits for the preparation and transmission of the record hereinbefore set forth shall run from the filing of the journal entry of the court of appeals granting such leave rather than from the filing of the notice of appeal.

Rule 3 of the Local Rules for the Third District Court of Appeals

The Record
(A) The clerk of the trial court shall not prepare and assemble the documents constituting any part of the record on appeal, as defined by Appellate Rule 9(A), unless the appellant has filed with his notice of appeal a praecipe and has paid the lawful fees therefore (R.C. §2505.08). This praecipe shall be combined with and shall additionally constitute the document prescribed by Appellate Rule 9(B) to be filed with the clerk of the trial court with the notice of appeal setting forth a description of the parts of the transcript which the appellant intends to include in the record, or a statement that no transcript is necessary, or that a statement pursuant to either Rule 9(C) or 9(D) will be submitted.
A copy of such combined praecipe and statement shall be served by the appellant on the

appellee in fulfillment of the requirements of Appellate Rule 9(B).
(B) The combined praecipe and statement referred to in subdivision (A) of this rule shall be in whichever of the following forms is appropriate and the clerk shall in no circumstances accept any form other than one of those hereinafter set forth: ..
(C) It shall be the responsibility of the clerk of the trial court to proceed in the manner directed by the praecipe which is filed and in no other manner unless specifically directed otherwise by one of the Judges of this Court or by its administrative sectetary. No oral direction by counsel will be recognized.
(D) It is the appellant's responsibility and not that of any court reporter, the clerk of the trial court, or the clerk of the appellate court to obtain and timely deliver to the clerk of the trial court the complete transcript of proceedings, partial transcript of proceedings, statement of the evidence or proceedings, or agreed statement of the case, as may be appropriate.
In no event shall the reporter be deemed either the agent or officer of the trial court, the appellate court, or of the clerks of either court with respect to the timely preparation, delivery, or filing of any document pertaining to the appeal, and no motion for an extension of the time for the filing of any such document shall be received or considered by the trial court or will be received or considered by this court from any person other than respective counsel for the parties to an appeal or from a party if not represented by counsel.
(E) Failure of an appellant to file with the clerk of the trial court or to serve on the appellee a statement and praecipe as set forth and in the form prescribed by this rule, to pay the clerk of the trial court's

lawful fees, or to timely furnish the clerk of the trial court with an agreed statement of the case, shall be construed as a failure to prosecute the appeal and be grounds for dismissal.

State of Ohio Statutory Provisions

R.C. 1901.24

Demand for jury trial; number required to concur in verdict.

Any cause in a municipal court, either civil or criminal, shall be tried to the court unless a jury trial is demanded in writing by a party entitled to the same. A demand for a jury trial in civil cases must be made in accordance with rule of court, and if there is no rule, then not less than three days before the date set for trial, or unless the judge in the interest of justice on his own motion orders a trial by jury. In any criminal case in which the accused desires a jruy trial, a demand for a jury trial must be made by the accused or his attorney. Such demand must be in writing and filed with the clerk of court not less than three days prior to the date set for trial, or on or before the day following receipt of notice of the date set for trial, whichever is later. Failure to demand a jury trial as provided in this section is a complete waiver of the right thereto. In any civil action where a jury is demanded, it shall be composed of six qualified electors, unless the parties agree to a lesser number or demand is made for a jury of eight or twelve electors. In all civil actions a jury shall render a verdict upon the concurrence of three-fourths or more of their number. Whenever three-fourths of the jury does not consist of an integral number, the next higher number shall be

construed to represent three-fourths of such jury. In any criminal action a jury shall be composed of twelve qualified electors and their verdict shall be unanimous.

R.C. 2938.04

Jury trial.

In courts of record right to trial by jury as defined in section 2945.17 of the Revised Code shall be claimed by making demand in writing therefor and filing the same with the clerk of the court not less than three days prior to the date set for trial or on the day following receipt of notice whichever is the later. Failure to claim jury trial as provided in this section is a complete waiver of right thereto. In courts not of record jury trial may not be had, but failure to waive jury in writing where right to jury trial may be asserted shall require the magistrate to certify such case to a court of record as provided in section 2937.08 of the Revised Code.

R.C. 2945.17

Right of trial by jury.

At any trial, in any court, for the violation of any statute of this state, or of any ordinance of any municipal corporation, except in cases in which the penalty involved does not exceed a fine of one hundred dollars, the accused has the right to be tried by a jury.

United States Statutory Provisions

28 U.S.C. §753(b)

One of the reporters appointed for each such court shall attend at each session of the court and at every other proceeding designated by rule or order of the court or by one of

the judges, and shall record verbatim by shorthand or by mechanical means which may be augumented by electronic sound recording subject to regulations promulgated by the Judicial Conference: (1) all proceedings in criminal cases had in open court; (2) all proceedings in other cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings as a judge of the court may direct or as may be required by rule or order of court or as may be requested by any party to the proceeding. The Judicial Conference shall prescribe the types of electronic sound recording means which may be used by the reporters.
The reporter shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk who shall preserve them in the public records of the court for not less than ten years. An electronic sound recording of proceedings on arraignment, plea, and sentence in a criminal case, when properly certified by the court reporter, shall be admissible evidence to establish the record of that part of the proceeding.
The reporter shall transcribe and certify all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken have been certified by him and filed with the clerk as hereinabove provided in this subsection. He shall also transcribe and certify such other parts of the record of proceedings as may be required by rule or order of court. Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter shall promptly transcribe the

original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request. The reporter shall promptly deliver to the clerk for the records of the court a certified copy of any transcript so made. The transcript in any case certified by the reporter shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records taken by the reporter.
The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

U.S. CONST. fourteenth amend.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Public confidence and respect for the institutions and administration of justice are indispensible in a country where liberty is cherished. Self-rule demands this confidence and requires this respect. This case involves a serious challenge to the integrity of the judicial process in the State of Ohio.

The trial in the first instance involved an alleged violation of R.C. 4511.21, "Speed Limits." The matter was heard in the Marion County Municipal Court before Judge Charlton Myers on February 8, 1979. Judge Charlton Myers denied the Defendant/Appellant's timely demand for a trial by jury. At no time during the course of the trial was the Defendant/Appellant offered the assistance of Counsel, or advised of his rights to the same. At no time during the course of the trial was the Defendant/Appellant, standing before the Court alone, advised by Judge Myers of any rights available according to law, to wit: rights pursuant to the Constitution of the United States; rights pursuant to the Constitution for the State of Ohio; rights pursuant to Ohio statutes;

rights pursuant to Ohio court-rules. No record of the proceedings was taken despite Defendant/Appellant's many recitations to the Court "for the record." Defendant/Appellant was not advised by the Court that no record of the proceedings was taken until after the Court had rendered its verdict, and the Defendant/Appellant indicated his intention to appeal. The radar evidence admitted by Judge Charlton Myers was judicially noticed over the Defendant/Appellant's many objections. The Defendant/Appellant's objections and recitations of case authority, "for the record," were summarily disregarded. The Prosecution failed in its statutory obligation to charge the accused properly, according to the language of R.C. 4511.21, however, the Defendant/Appellant's objection in this regard was summarily dismissed by the Trial Judge, Charlton Myers. The Defendant was found guilty against the weight of the evidence in a proceeding which took one hour and forty-five minutes. The "Judgment Entry" was filed in the Marion Municipal Court on March 14, 1979. It is worth noting that the "Judgment Entry" filed by the Trial Court on March 14, 1979, on its face reflects

the lack of independence and objectivity of the tribunal. The "Judgment Entry" entered by the Trial Court on March 14, 1979 reflects that the State of Ohio had first approved the language of the order, or had in fact drafted the same, before entry by the Trial Court. The Defendant, however, was not consulted or given the opportunity to approve such an order. The Defendant was fined and assessed court costs in the Trial Court, and the Defendant was not allowed to speak prior to the Court passing sentence. Although the significance of the Trial Judge's failure to allow the Defendant to speak prior to the Court's imposition of sentence, is of no present moment, it is significant to the extent that the "Judgment Entry" as entered by the Trial Court on March 14, 1979, is incorrect in this regard.

The case went to the Third District Court of Appeals for review. On August 17, 1979, an Affidavit of Disqualification was filed in the Third District Court of Appeals with respect to Judge J. Thomas Guernsey, Judge Ralph D. Cole, and Judge Edgar L. Miller. The Defendant/Appellant filed this affidavit for the reason that Judge J. Thomas Guernsey, Judge

Ralph D. Cole, and Judge Edgar L. Miller were biased, prejudiced, and partial with respect to the Defendant/ Appellant, evidencing a hostile feeling or spirit of ill will toward the Defendant/Appellant, and a favoritism toward the Plaintiff/Appellee, the State of Ohio. The aforementioned Affidavit of Disqualification was also sent directly to the attention of Chief Justice Frank D. Celebreeze of the Ohio State Supreme Court, and received by him on August 17, 1979. Chief Justice Celebreeze returned the Affidavit without consideration, indicating that the document was not seasonably filed. On August 28, 1979, the Affidavit of Disqualification was again sent to the attention of Chief Justice Frank D. Celebreeze. The letter enclosing the Affidavit of Disqualification, which has been made a part of the file in this case, called particular reference to the Code of Judicial Conduct for the State of Ohio. Canon 3(C) stipulates an affirmative duty for a judge "to disqualify himself in a proceeding in which his impartiality might reasonably be questioned.." Chief Justice Celebreeze received both the letter and the Affidavit of Disqualification

on August 31, 1979. He responded to neither. Judge J. Thomas Guernsey, Judge Ralph D. Cole, and Judge Edgar L. Miller did not disqualify themselves from ruling upon the merits of the above entitled cause.

On March 4, 1980, Judge J. Thomas Guernsey, Judge Ralph D. Cole, and Judge Edgar L. Miller rendered their decision, affirming the judgment of the lower court. The three member panel of the Third District Court of Appeals for the State of Ohio affirmed this conviction on a "silent record." Indicative of their judgment in this matter is the statement, set forth on page ten of their opinion, which states:

> There being no record of the trial proceedings before this court, there is no affirmative display of the error claimed and thus no prejudicial error to defendant.

While the absence of a trial record was a convenient vehicle for disposing of appellate argument and appellate review, Judge J. Thomas Guernsey, Judge Ralph D. Cole, and Judge Edgar L. Miller had to first dispose of the trial record.

On or about June 21, 1979, the trial record as submitted by the trial court pursuant to Rule 9(C) of the Ohio Rules of Appellate Procedure, was ordered

stricken from the files of the Court of Appeals for the Third Appellate District of the State of Ohio, Sua Sponte. The rationale for this action was stated by Judge J. Thomas Guernsey, Judge Ralph D. Cole, and Judge Edgar L. Miller, as follows:

> This cause came on for determination sua sponte as to whether a statement of evidence settled and approved by the trial judge on April 6, 1979, should be stricken from the record and files. The Court find that on April 6, 1979, the Clerk of this Court gave notice to the parties and to this Court that the "original papers of Marion Municipal Court" were filed herein on April 6, 1979, but did not advise that such filing actually included a statement of evidence settled and approved by the trial judge on April 6, 1979; that for such reason it was erroneously stated in the journal entry of this Court filed on May 18, 1979, that "no statement of evidence approved and settled as prescribed by Appellate Rule 9(C) was filed therewith;" that pursuant to Appellate Rule 10(A) it was incimbent upon the clerk of the trial court to transmit the record to the clerk of this Court when "complete for thepurposes of appeal or when forty days have elapsed after the filing of the notice of appeal and no order extending time has been granted under subdivision (C)"; that it was incumbent, therefore, for the clerk of the trial court to transmit those parts of the record in the clerk's possession on April 4, 1979 (the fortieth day after the filing of the notice of appeal) and the ministerial error of the clerk in not transmitting the same to the clerk of this Court until April 6, 1979, only permits the late filing of such parts of the record as were properly in the clerk's posses-

> sion on April 4, 1979; that it was incumbent upon the appellant either to obtain the settlement and approval of the statement of evidence on or before the fortieth day after the filing of the notice of appeal or to obtain an extension of time under Appellate Rule 10(C) for transmission of the record so that the approved and settled statement of evidence could be timely filed as part of the record; that the appellant not having done so the statement of evidence has been improperly filed in this court beyond the time for doing so and without leave; and that it should therefore, be stricken from the record and files.
> It is therefore ORDERED that the statement of evidence approved and settled by the trial judge on April 6, 1979 and filed in this Court on the same date be, and the same hereby is, stricken from the record and files. Exceptions save.

On or about June 27, 1979, the Defendant/Appellant filed an Application for Reconsideration of the Order Sua Sponte Striking the Statement of Evidence, as "settled and approved" by the trial court, from the public file of the Third District Court of Appeals, stating in support thereof:

> (a) That on or about February 8, 1979, a trial was held in the above entitled cause, without a jury present, without counsel having been offered or provided the accused, and without a record of the proceeding having been made;
> (b) That the proceeding described in paragraph (a) was a criminal matter, and that defendant/appellant was found guilty, by the trial judge, Charlton Myers;

(c) That on or about March 14, 1979, the "Judgment Entry" was filed in the Marion County Municipal Court;
(d) That the defendant/appellant's "Notice of Appeal", filed prior thereto became effective as of the date of entry of judgment, March 14, 1979;
(e) That pursuant to Rule 9(C) of the Ohio Rules of Appellate Procedure, a Statement of Evidence was served upon the appellee, through its attorney, Jonathan Williamson on March 22, 1979;
(f) That in the absence of a trial by jury, and in the absence of the offer and assistance of counsel, and in the absence of a record having been made of a lower court proceeding, the defendant/appellant, in good faith compliance with Rule 9(C) of the Ohio Rules of Appellate Procedure, filed a Statement of Evidence with the Court on March 23, 1979;
(g) That on March 23, 1979, the defendant/appellant's Statement of Evidence and Proceedings was ordered stricken from the Court file, this Court stating:

> "Upon consideration the Court find that the Statement of Evidence filed herein on March 23, 1979 was not settled and approved by the trial court as required by Appellate Rule 9(C) and is, therefore, not entitled to be filed."

(h) That on or about March 29, 1979, the Statement of Evidence was stricken from the court file;
(i) That on March 30, 1979, the appellee, State of Ohio, through its attorney, Jonathan Williamson, filed its objections to the defendant/appellant's Statement of the Evidence or Proceedings with the Marion Municipal Court;
(j) That on or about April 6, 1979, Judge Charlton Myers, filed his Settlement and Approval of the appellant's Statement and appellee's Objections with the Marion County Municipal Court;

(k) That on or about April 6, 1979, the original papers of the Marion Municipal Court were filed in the Court of Appeals, Marion County, Ohio, in the case of Ohio v. Korn, 9 79-7;
(l) That on or about May 16, 1979, the defendant/appellant filed a motion to file statement of evidence, and affidavit in support thereof, and a certificate of service, with this Court;
(m) That in support of the motion to file the Statement of Evidence, the defendant/appellant stated:

(i) That in accordance with Rule 9(E) of the Ohio Rules of Appellate Procedure, the defendant/appellant states: that the trial court mis-stated the facts and has omitted material portions of the lower court proceedings from the composition of the record;
(ii) That the trial court has appeared to issue an opinion rather than submit the facts for review to the Court of Appeals;
(iii) That in the absence of a trial by jury, and in the absence of a record in the lower court proceeding, it is imperative to an effective appeal, that the findings of fact of the trial court be scrutinized in view of the defendant/appellant's Statement of Evidence, and appellee's objections thereto;
(iv) That as of this day, May 12, 1979, only the trial court's findings and the appellee's objections are part of the file in the Court of Appeals;

(n) That on or about May 18, 1979, this Court overruled defendant/appellant's motion to file statement of evidence, stating:

Upon consideration, the Court find that either a transcript of proceedings, statement of evidence or an agreed statement was due to be filed in this Court under the provisions of Appellate Rules 9 and 10 as part of the appellate record on or before April 4, 1979; that

a statement of evidence not settled and approved in the manner required by Appellate Rule 9(C) was filed herein and on March 29, 1979, was stricken from the files; that although the other parts of the record were filed on April 6, 1979, no Statement of Evidence approved and settled as prescribed by Appellate Rule 9(C) was filed therewith nor has leave been sought for an extension of time to do so, nor was such leave thereafter sought until motions filed on May 16, 1979, some 40 days thereafter; that no sufficient explanation has been given either for the delay in seeking such leave, or for the delay in preparing and filing a Statement of Evidence, other than the reasons which are inherent in all cases where Statement of Evidence is used in lieu of a transcript of proceedings; and that for such reason, the said motion is not well taken;

(o) That defendant/appellant's statutory right to an appeal pursuant to R.C. 1901.30 is not predicated and should not properly be predicated upon the timely filing of a trial judge with respect to the settlement and approval of the appellant's Statement of Evidence and Proceedings and the appellee's Objections thereto;

(p) That defendant/appellant's right to an appeal pursuant to Rule 4 of the Ohio Rules of Appellate Procedure should not be predicated on the timely filing of a trial judge with respect to the settlement and approval of the appellant's Statement of Evidence and Proceedings and appellee's Objections thereto;

(q) That the refusal of this Court to allow the defendant/appellant to file a Statement of Evidence and Proceedings, offered in good faith, both before and after the trial judge's offering of his settlement and approval of the

defendant/appellant's Statement of Evidence and Proceedings and appellee's Objections thereto, is not consistent with the notions of due process as articulated in the Constitutions of the State of Ohio and the United States;

(r) That on or about May 16, 1979, a motion to correct the record was filed pursuant to Rule 9(E) of the Ohio Rules of Appellate Procedure, which rule states in part:

> If anything material to either party is omitted from the record by error or accident, or is mis-stated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the Court of Appeals, or the Court of Appeals on proper suggestion or of its own initiative, may direct that the omission or mis-statement be corrected, and if necessary, that supplemental record be certified and transmitted..

(s) That defendant/appellant's Motion to Correct the Record, stated in part:

> A. That in accordance with Rule 9(E) of the Ohio Rules of Appellate Procedure, the defendant/appellant states: that the trial court has mis-stated the facts and has omitted material portions of the lower court proceedings from the composition of the record;
>
> B. That the trial court has appeared to issue an opinion rather than submit the facts for review to the Court of Appeals;
>
> C. That if the defendant had agreed with the lower court's findings of fact, and decisions, there would have been no reason to appeal;
>
> D. That in the absence of a trial by jury, and in the absence of a record in the lower court proceeding, it is imperative to an effective appeal, that the findings of fact of the trial court be scrutinized in view of the defendant/appellant's Statement of Evidence and the appellee's Objections thereto;
>
> E. That in fairness to the trial court,

the State of Ohio, and the defendant, the record on appeal should consist of the three documents filed with respect to the record: (a) The Statement of Evidence and Proceedings submitted by the defendant/appellant; (b) The Objections to Defendant/Appellant's Statement of the Evidence or Proceedings submitted by the State of Ohio through its attorney, Jonathan Williamson; and (c) The Trial Court's settlement and approval of the appellant's Statement and appellee's Objections, submitted by the trial judge, Charlton Myers;

F. That the trial judge's statement in his settlement and approval of the appellant's Statement and appellee's Objections, to wit: that, 'Any of appellant's statements which are inconsistent with or contrary to the above are disapproved,' is fundamentally unfair and unjust, and it denies the defendant from the outset, of having a fair and impartial review of the facts arising from the trial court proceedings;

(t) That on or about May 18, 1979, this Court overruled the defendant/appellant's motion to correct the record, stating:

> Upon consideration, the Court find that the motion deals with a difference as to whether a proposed Statement of Evidence truly discloses what occurred in the trial court, which difference may be resolved under Appellate Rule 9(E) only by the trial court, and does not deal with an omission from the record by error or accident within the jurisdiction of this Court to determine; that, additionally, the Court's ruling hereinbefore set forth, overruling a motion for permission to file a Statement of Evidence moots any concern whether a proposed statement of evidence reflects what

occurred in the trial court; and that for such reasons the motion should be overruled.

(u) That the Order overruling defendant/appellant's motion to correct the record was a matter of discretion and not a matter of jurisdiction;

(v) That on or about June 21, 1979, Statement of Evidence filed April 6, 1979, as submitted from the trial court, was stricken from the files of this Court Sua Sponte;

(w) That, in view of the Judgment Entry date of March 14, 1979, and the effective date of the defendant/appellant's Notice of Appeal, being the same, March 14, 1979, it is clear from the Court records, that the trial court's settlement and approval of the defendant/appellant's Statement of Evidence and Proceedings and the appellee's Objections thereto, is properly within the Court file;

(x) That the defendant/appellant was wrongfully accused and wrongfully convicted in the trial court, in violation of the laws of the State of Ohio, the Court Rules of the State of Ohio, and the Constitutions of the United States and the State of Ohio;

(y) That the defendant/appellant is not an attorney; is not licensed to practice law in any State of the Union; and does not have the unlimited resources of time, and assistants, available to the State of Ohio in resolving this matter fairly;

(z) That although the defendant/appellant is a citizen of the State of Michigan, he is entitled to the same fairness, the same justice, that would be afforded citizens of the State of Ohio, pursuant to the Privileges and Immunities Clause of the Constitution of the United States, and pursuant to the Due Process provisions of the Fourteenth Amendment of the Constitution of the United States;

(aa) That although the trial court's settlement and approval of the defendant/appellant's

> Statement of Evidence and Proceedings and the appellee's Objections thereto, does not fairly reflect the proceedings in the lower court, it would be error to strike this document from the Court file for any reason, as this would serve no purpose other than to obstruct defendant/appellant's statutory right to appeal, and right to appeal pursuant to Court Rule. WHEREFORE, the defendant/appellant, STEPHEN PAUL KORN, moves this Honorable Court to reconsider its Order striking the Statement of Evidence filed April 6, 1979, from the files of the Court of Appeals Sua Sponte, and rescind the same; and to reconsider the propriety of its prior rulings with respect to the content of the record for appeal, in the interest of justice, and in the interest of maintaining the integrity of the judicial system.

On or about July 3, 1979, the Court of Appeals for the Third Appellate District of the State of Ohio summarily denied Defendant/Appellant's Application for Reconsideration of the Order Sua Sponte Striking the Statement of Evidence From the File, Judge J. Thomas Guernsey, Judge Ralph D. Cole, and Judge Edgar L. Miller stating:

> On application of appellant for reconsideration the Court find same not well taken and it is hereby ORDERED that the application be, and the same hereby is, denied.

Thus, the members of the Third District Court of Appeals for the State of Ohio assured that there would not be even a distorted record of the lower court proceedings

to review in this matter, ordering the same stricken from the public file.

On May 29, 1979, the Defendant/Appellant filed his Appellate Brief in the file of the Third District Court of Appeals. Included therein is a Statement of the Case, which states in part:

> Defendant/Appellant has been denied a trial by jury; denied a trial of public record; has been put to the cumbersome task of recreating the course of the trial in the form of a Statement of Evidence and Proceeding; and has been denied permission to file the same, along with the statements submitted and filed with the Court by the other parties to this appeal, to wit, the trial judge, and the State of Ohio. Accordingly, the Defendant/Appellant wishes to take this forum to present his Statement of Evidence, as was submitted and objected to by the State of Ohio, through its attorney, Jonathan Williamson.
> The format for this presentation, will not be that of the Statement of Evidence and Proceedings, but will be in the context of the Appellee's edited objections. Thus, both the Defendant/Appellant's Statement of Evidence and Proceedings, and the Appellee's Objections thereto, can be presented in the same light for comparison. This will be the Defendant/Appellant's Statement of the Case. This Statement of the Case is presented in due respect for the Court, for the institutions of justice, and within the spirit of R.C. 2901.04, which states in part:
>
> > (B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be

> construed so as to effect the fair, impartial, speedy, and sure administration of justice.
> Committee Comment:
> ..In addition, the section provides a rule for the construction of procedural measures, based on the premise that the prime object of procedural statutes and rules is to promote justice both to the accused and to the state..

Thus, an objective presentation of the case reflecting the determination of facts from the trial court, as viewed by this Defendant/Appellant and the State of Ohio has at all times been set forth as part of the Appellate Court file in this case, for an independent determination through appellate scrutiny.

On August 13, 1979, the Defendant/Appellant filed a Demand For Oral Argument and A Motion for Permission to File a Reply Brief with the Third District Court of Appeals. In support thereof, the Defendant/ Appellant stated:

> 1. That on or about February 8, 1979, a trial was held in the above entitled cause, without a jury present, without counsel having been offered or provided the accused, and without a record of the proceeding having been made;
> 2. That the proceeding described in paragraph 1 was a criminal matter, and that the defendant/ appellant was found guilty, by the trial judge, Charlton Myers;
> 3. That on or about June 22, 1979, defendant/

appellant filed a MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY BRIEF with this Court, which stated in part:

> a. That on or about June 18, 1979, the Brief of the Appellee, State of Ohio, through its attorney, Jonathan Williamson, was received by the defendant/appellant, STEPHEN PAUL KORN;
> b. That Rule 18(A) of the Ohio Rules of Appellate Procedure allows the appellant ten days after service of the Brief of the Appellee in which to file a Reply Brief;
> c. That the defendant/appellant is presently engaged in intensive preparation for the Michigan Bar Examination to be held on July 24, 1979 and July 25, 1979;
> d. That it is imperative that the defendant/appellant be allowed to further his studies unimpaired during this period;
> e. That the defendant/appellant has been wrongfully accused, and wrongfully found guilty in the above entitled cause;
> f. That with due respect to the Court, filing within the Rule would work a severe hardship on the defendant/appellant;
> WHEREFORE, the defendant/appellant, STEPHEN PAUL KORN, moves this Honorable Court, for an enlargement of time in the amount of fifty-six days from this date, (June 18, 1979);

4. That on or about June 26, 1979, this Court stated:

> On motion of the appellant and for good cause shown it is hereby ordered that the time for filing appellant's reply brief be, and the same hereby is, extended to July 19, 1979. exceptions saved.

5. That this order on its face is not logically consistent;

6. That on or about July 5, 1979, a certified letter was sent to Judge J. Thomas Guernsey,

on behalf of this defendant/appellant stating that the relief granted to the defendant/appellant, as stated in paragraph 4, was not consistent with the "good cause shown", and that the defendant/appellant would respond to the pleadings appropriately by August 13, 1979;

7. That on or about June 22, 1979, the defendant/appellant received notice from Sally A. Blew, the Court Administrator, that the above entitled cause would "not be assigned for oral argument until the month of August;"

8. That on or about July 20, 1979, the Court assigned the above entitled cause for a hearing on the merits for Wednsday, the 8th day of August, 1979, at 10:00 A.M., at Lima, Ohio;

9. That defendant/appellant left for Lansing, Michigan on July 22, 1979 for the Michigan Bar Examination and for a short vacation thereafter;

10. That defendant/appellant returned from his trip to Northern Michigan on or about August 8, 1979, at 1:30 A.M. wherein notice for the hearing on the merits was first received;

11. That defendant/appellant called the Court on the morning of August 8th, 1979, prior to the time of the hearing to inform them that it was then impossible for the defendant/appellant to appear, and requesting that the oral argument be rescheduled for a time in the future, after the defendant/appellant has had an opportunity to file his reply brief;

12. That the defendant/appellant was instructed to speak with Judge J. Thomas Guernsey with respect to another court date;

13. That on or about August 8, 1979, at approximately 11:48 A.M. the defendant/appellant spoke with Judge J. Thomas Guernsey, who denied further consideration of giving the defendant/appellant another court date, despite the defendant/appellant's correspondences with the Court in motion and letter form;

14. That Judge J. Thomas Guernsey informed the defendant/appellant further that the above entitled cause had been submitted for consideration;
15. That defendant/appellant has been denied his right to an oral argument;
16. That defendant/appellant has been denied his right to file a reply brief;
17. That such actions by this Court deny the defendant/appellant any notion of justice under the laws and Court Rules of the State of Ohio, as guaranteed by the Privileges and Immunities Clause of the United States Constitution.
WHEREFORE, the defendant/appellant, STEPHEN PAUL KORN, moves this Court to schedule an oral argument for the above entitled cause, and grant permission for filing a reply brief.

On or about August 21, 1979, the Court of Appeals for the Third Appellate District of the State of Ohio denied Defendant/Appellant's Demand for Oral Argument and overruled Defendant/Appellant's Motion for Permission to File a Reply Brief, Judge J. Thomas Guernsey, Judge Ralph D. Cole, and Judge Edgar L. Miller, stating:

> This cause came on for determination on the "demand" of the appellant for oral argument and his motion for permission to file a reply brief.
> Upon consideration the Court find that the appeal was assigned for oral argument on the merits of the appeal in due course on August 8, 1979 (consistently even with the appellant's letter of May 30, 1979, to the court administrator requesting that oral argument be scheduled "in the second, third or fourth week, in the month of August" on "either a Tuesday, Wednsday (sic), or Thursday"); that the appellant was

duly notified by written notice mailed on July 20, 1979, of the date, time, and place of the assignment; that on said date, and at said time and place, the appellant did not appear for oral argument and the cause was marked submitted without the oral argument of the appellant; that, thereafter, on said date the appellant first contacted the court seeking a rescheduling of the oral argument; that appellant had the opportunity for same and his not taking advantage of such opportunity is of his own responsibility; that he has not shown good cause for this Court to vacate the submission and to reschedule oral argument; and that the said "demand" should be denied. The Court further find that the appellee's answer brief was filed in this appeal on June 15, 1979; that by rule the appellant had until June 28, 1979, to file a reply brief thereto; that pursuant to his motion for an extension of time to do so the Court did not extend the time to the date requested but, instead, extended the time for such reply brief to July 19, 1979; that the appellant had full opportunity to file a reply brief and his failure to do so is of his own responsibility; that notwithstanding that he was advised by this Court by its letter of April 6, 1979, that though representing himself he would be held to the same standards as are applicable to a lawyer, he has consistently sought special consideration usually involved with his interpretation of court rules consistent only with his desires and benefit; that he has not shown good cause for permission to now file a reply brief, and that his motion for same should be overruled.

It is therefore ORDERED that the demand of the appellant for oral argument should be, and the same hereby is, DENIED, and the motion of the appellant for permission to file a reply brief should be, and the same hereby is,

OVERRULED.
Exceptions saved.

On or about August 30, 1979, the Defendant/Appellant filed an Application for Reconsideration of the Orders Denying Demand for Oral Argument and Overruling Motion for Permission to File a Reply Brief, stating in support thereof:

1. That on or about February 8, 1979, a trial was held in the above entitled cause, without a jury present, without counsel having been offered or provided the accused, and without a record of the proceeding having been made;
2. That the proceeding described in paragraph 1 was a criminal matter, and that the defendant/appellant was found guilty, by the trial judge, Charlton Myers;
3. That the defendant/appellant's rights pursuant to Rule 21(A) and 17(C) of the Ohio Rules of Appellate Procedure allowing the defendant/appellant the right to Oral Argument, and the right to file a Reply Brief, have been violated and denied by the Honorable J. Thomas Guernsey, the Honorable Ralph D. Cole, and the Honorable Edgar L. Miller;
4. That the Orders issued by the Court on August 21, 1979 are inconsistent with the facts of the matter, to wit:
    a) the orders fail to reflect the notice to the Court of defendant/appellant's unavailability until August 13, 1979, as set forth in the defendant/appellant's Motion for Enlargement of Time to File Reply Brief, filed with the Court on or about June 22, 1979;
    b) the orders fail to reflect the notice to the Court of defendant/appellant's unavailability until August 13, 1979 as set forth in the certified letter to the Honorable

J. Thomas Guernsey, dated July 5, 1979;

c) the orders fail to reflect the prior notice given to the defendant/appellant that the case would not be assigned until the month of August for Oral Argument, as stated in a letter from the Court to the defendant/appellant, and that subsequent thereto, the above entitled cause was assigned for Oral Argument on July 20, 1979, to be heard on August 8, 1979;

d) the Orders mistakenly and improperly state that the defendant/appellant first contacted the court seeking a rescheduling of the oral argument subsequent to the time set for the Oral Argument, and subsequent to the submission of the case without Oral Argument for consideration, when in fact and in deed, the court was "first contacted" and first notified prior to the time set for Oral Argument, and prior to the case being submitted for consideration without Oral Argument, and that the Court unjustly and unfairly proceeded;

e) the Orders mistakenly and improperly state or suggest that defendant/appellant had an opportunity to reschedule the Oral Argument;

f) the Orders mistakenly and improperly state that the defendant/appellant has not shown good cause for his right to Oral Argument, pursuant to the Ohio Rules of Appellate Procedure;

g) the Orders mistakenly and improperly state or suggest that the defendant was "duly notified."

h) the Orders mistakenly and improperly state or suggest that the defendant/appellant had "full opportunity" to file a reply brief, the Court being aware of the defendant/appellant's inability to do the same, as so acknowledged by the Court;

i) the Orders mistakenly and improperly state or suggest that the defendant/appellant is to be held to the "standards as are

applicable to a lawyer," making reference to a letter dated April 6, 1979 from the Honorable J. Thomas Guernsey, wherein the same assertion is stated, when the defendant/appellant stands before the Courts of Ohio, not "licensed to be a lawyer in the State of Ohio," and not having been offered the assistance of Counsel at any step in the proceedings;

j) the Orders mistakenly and improperly state, suggest, or imply, that the defendant/appellant has not complied with "the same standards as are applicable to a lawyer;"

k) the Orders mistakenly and improperly state that the defendant/appellant has not shown good cause for his right to file a Reply Brief, pursuant to the Ohio Rules of Appellate Procedure;

5. That R.C. 2901.04 states in part:

> (A) Sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.
>
> (B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.
>
> Committee Comment
>
> This section codifies the rule that penal statutes must be strictly construed against the state and liberally construed in favor of the accused. In addition, the section provides a rule for the construction of procedural measures, based on the premise that the prime object of procedural statutes and rules is to promote justice both to the accused and to the state. Thus, procedural measures are not to be construed in terms of strictness or liberality, but rather to effect the fair, impartial, speedy, and sure administration of justice.

6. That the Orders issued by the Court on

August 21, 1979, are outside the spirit of R.C. 2901.04.

7. That the defendant/appellant has been denied by the Honorable J. Thomas Guernsey, the Honorable Ralph D. Cole, and the Honorable Edgar L. Miller, of the Court of Appeals for the Third Appellate District for the State of Ohio, of the Equal Protection under the laws of the State of Ohio, in contravention of the Fourteenth Amendment to the Constitution of the United States, and in contravention of Article I, Section 2 of the Constitution for the State of Ohio.

8. That the Defendant/Appellant has been denied by the Honorable J. Thomas Guernsey, the Honorable Ralph D. Cole, and the Honorable Edgar L. Miller, of the Court of Appeals for the Third Appellate District for the State of Ohio, of fair access to the Courts for the State of Ohio in violation of the Due Process provision in the Fourteenth Amendment to the Constitution of the United States, and in violation of the Due Course of Law provision of Article I, Section 16 of the Constitution for the State of Ohio.

WHEREFORE, the defendant/appellant, Stephen Paul Korn, regretfully and apologetically asks this Court to review its orders with respect to fundamental fairness, and the principles upon which our government was founded and exists.

On or about October 11, 1979, the Court of Appeals for the Third Appellate District of the State of Ohio summarily denied Defendant/Appellant's Application for Reconsideration of the Orders Denying Demand for Oral Argument and Overruling Motion for Permission to File a Reply Brief, Judge J. Thomas

Guernsey, Judge Ralph D. Cole, and Judge Edgar L Miller stating:

> On application of appellant for reconsideration the Court find same not well taken and it hereby ORDERED that the application be, and the same hereby is, denied.

Thus, the members of the Third District Court of Appeals for the State of Ohio assured that there would not be a record from the appellate level, to preclude or hinder review by the Supreme Court for the State of Ohio, or by the Supreme Court of the United States.

A notice of Demand for Legal Costs was filed in the public file of the Third District Court of Appeals, on or about August 28, 1979, indicating in part:

> (i) that in the absence of a right to a jury trial in the lower court, and in the absence of a right to a record of the proceedings in the lower court, and in the absence of the assistance of counsel in both the lower court proceeding and the proceeding on appeal, the State of Ohio, through its representatives in this matter, should bear the legal costs of the Defendant/Appellant.

The pleading was ordered stricken from the public file on October 10, 1979, by the Third District Court of Appeals for the State of Ohio. An Application for Reconsideration of the Order Striking the Notice of

Demand for Legal Costs from the Appellate File was filed by the Defendant/Appellant on October 25, 1979. The Defendant/Appellant asserted that while the Court in its discretion might deny any request for Costs, striking the document from the public court file could only be interpreted as an attempt to obstruct appellate scrutiny. The Application was summarily denied by Appellate Court Judges Guernsey, Cole, and Miller, on or about October 31, 1979.

On March 4, 1980, the biased, prejudiced, and partial Appellate Court Judges of the Third Appellate District, to wit, Judge Guernsey, Judge Cole, and Judge Miller, affirmed the conviction of the lower court on a "silent record." A fair reading of their opinion rendered in this cause gives no indication that the Judges bothered to look at the argumentation contained in the briefs. However, the Judges did take the opportunity that this case presented, to "parenthetically state a proposition of law:

> "We parenthetically note that in State v. Staggs, Unreported Hancock County Case No. 5-76-18, decided January 26, 1977, this Court stated that the reliability of the M.R.7 radar device would be judicially

> noticed thus dispensing with the necessity of expert testimony as to its nature and dunction or the scientific principles underlying the same."

On or about March 28, 1980, the Defendant/Appellant filed his Notice of Appeal to the Supreme Court for the State of Ohio. On May 2, 1980, the Defendant/Appellant filed his Memorandum of Jurisdiction in the above entitled cause, with the Supreme Court for the State of Ohio. On or about May 27, 1980, the State of Ohio filed a Memorandum of Appelle Opposing Jurisdiction with the Supreme Court for the State of Ohio, in the above entitled cause. On or about June 20, 1980, the Supreme Court issued an order, stating:

> This cause, here on appeal as of right from the Court of Appeals for Marion County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substanital constitutional question exists herein.

The Defendant/Appellant was sent an unsigned form order which was stamped for information and filing. Upon inquiry to the Clerk of the Ohio State Supreme Court, the Defendant/Appellant received another copy of this

aforementioned order, bearing the Seal of the Court, but void of any judicial signatures. A fair review of the judicial opinion rendered by the Ohio State Supreme Court in this matter gives no indication that the Judges of that Court bothered to look at the argumentation contained in the Memorandum in Support of Jurisdiction or in the Appellee's Memorandum Opposing Jurisdiction.

The issue of jury denial was first raised in this matter, when on November 30, 1978, the Defendant/Appellant filed a "Demand For Jury Trial" with the Marion County Municipal Court. On January 18, 1979, the Trial Judge wrote to this Defendant/Appellant's father:

> I have your letter of November 30, 1978, and also a jury demand from the defendant.
> It appears to me the young man, though a law student, needs a lawyer, as any lawyer would know that there is no right to a jury in a speeding case.
> The case is being assigned for trial. He will be notified.

On February 8, 1979, a trial was held in the Marion Municipal Court, and the Defendant/Appellant was not afforded a trial by jury. The issue was again raised in the Third District Court of Appeals for the State of Ohio, as set forth in Argument I of the Brief for

Appellant. In its Memorandum Opinion, the Third District Court of Appeals held:

> We conclued that the provisions of R.C. 2945.17 are well within the guidelines of Cheff v. Schnakenberg, 384 U.S. 373, Duncan v. Louisiana, 391 U.S. 145, and Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, and that no prejudicial error resulted from the trial court's refusal to grant defendant a jury trial.

The issue of an absolute and unconditional right to a record of the trial proceedings in the lower court was first raised on Appeal to the Third District Court of Appeals when the Defendant/Appellant recognized that the Ohio Courts would not allow the Defendant/Appellant an opportunity to present his case for Appeal through the presentation of a Rule 9(C) record. The argument for an absolute and unconditional right to a record of the proceedings in the trial court was specifically set forth in Argument II of the Brief for the Appellant in the Third District Court of Appeals. In its Memorandum Opinion, the Third District Court of Appeals held, in part:

> Criminal Rule 22 provides that:
> "In serious offense cases all proceedings shall be recorded.
> "In petty offense cases all waivers of

counsel required by Rule 44(B) shall be recorded, and if requested by any party all proceedings shall be recorded.

***

There is nothing in the record before us to indicate that defendant had requested that the proceedings be recorded in accordance with Criminal Rule 22. See State v. Gartana, 44 Ohio App. 2nd 233.

However, defendant further asserts that by virtue of a silent record it cannot be affirmatively shown that he was advised of his constitutional rights nor can a waiver of such rights be assumed from such a record.

He relies on Cleveland v. Whipkey, 29 Ohio App.2nd 99, decided January 27, 1972, for the proposition that the record must reveal a compliance with all constitutional safeguards.

We first note that this case deals with a guilty plea and, secondly, in the later case of East Cleveland v. Dragonette, 32 Ohio St. 2nd 147, a per curiam opinion, also involving a guilty plea the Supreme Court said at pages 148 and 149:

> "***the record before the Court of Appeals consisted only of the transcript of the Municipal Court's docket and journal entries, and that transcript failed to demonstrate the error complained of, i.e., error in accepting defendant's plea of guilty. This being so, there is nothing presented by defendant upon which a reviewing court can determine whether error was committed by the trial court.
>
> "***A party, having the duty of instituting the preparation of a record for the purpose of appeal, may not sit idly by and then predicate reversal upon the basis of a 'silent record.'"

No error prejudicial to defendant resulted from the lack of a record being taken in the trial court absent a request therefor by defendant.

The issue of the constitutionality of Rule 9 and Rule 10 of the Ohio Rules of Appellate Procedure, and of the constitutionality of Rule 3 of the Local Rules of Appellate Procedure for the Third District Court of Appeals for the State of Ohio was first raised and considered in the Third District Court of Appeals. The argument by the Appellant was set forth in Argument III of the Brief of the Appellant. In its Memorandum Opinion, the Third District Court of Appeals held:

> The third assignment of error asserts unconstitutionality of App. Rules 9 and 10 and Local Rule 3 of this court in that they place an undue burden upon defendant in perfecting his appeal by requiring him to prepare a statement of the evidence in the absence of a transcript of the proceedings at trial.
> Local Rule 3 of this court merely reasserts the requirements of R.C. 2505.08 as to the filing of a praecipe and a deposit of fees with the clerk and sets forth the form of the praecipe required.
> App. Rule 9 defines and determines the record on appeal and Appellate Rule 10 sets forth the time and method of transmitting the record to the clerk of the court of appeals. There is no constitutional right to appeal under the U.S. Constitution (Ross v. Moffit, 417 U.S. 600, 610-611) nor does the Ohio Constitution guarantee such a right. Middletown v. City Commission, 138 Ohio St. 596, 603. The state may prescribe rules as to appellate

> procedure and no violation of constitutional law is involved in a court's insistence that a statutory right of appeal be excercised according to the lawful rules of the court. 16 Am. Jur. 2nd 990, Constitutional Law, Section 584.
> We find no constitutional issue involving the rules of appellate procedure insofar as they establish procedure for preparing and transmitting the appellate record and overrule defendant's third assignment of error.

The issue of the trial court's failure to advise the defendant/appellant of any rights pursuant to the State of Federal Constitutions, Statutory Law, or Court Rules, and particularly the failure of the trial court to advise the accused, standing before the Court alone, of his right to Counsel, or offering the assistance of Counsel, was first raised as Argument IV in the Brief of the Defendant/Appellant in the Third District Court of Appeals. As to this issue, the Third District Court of Appeals in its Memorandum Opinion held:

> The fourth assignment of error deals with the failure of the trial court to advise the accused of his right to counsel or to offer him the assistance of counsel.
> It is highly questionable that this issue is before this court as nothing in the record affirmatively shows that the trial court failed to so advise defendant.
> However, in any event, no prejudicial error resulted therefrom.
> Criminal Rule 44(B) provides that "Where a

defendant charged with a petty offense is unable to obtain counsel, the court may assign counsel to represent him. When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon him, unless after being advised by the court, he knowingly, intelligently, and voluntarily waives assignment of counsel."

The record before us would not indicate any inability on the part of defendant to obtain counsel. On the contrary according to the original papers, five days following the arrest, defendant's father, an attorney at law, wrote to the clerk of the court seeking information as to whether the matter could be resolved at a pre-trial conference or by mail, thus indicating that defendant had counsel. On the same date defendant forwarded to the court a demand for jury trial and a statement to the clerk of the court asking the clerk to "please enter my appearance as defendant in the above entitled cause in pro per."

The latter statement can only be reasonably interpreted to mean that defendant was entering his appearance in propria persona, i.e., in his own person or behalf without counsel. See Ballentine's Law Dictionary, Third Edition (1969) page 633.

The constitutional right to counsel only extends to those instances wherein imprisonment may be imposed. Scott v. Illinois, U.S., 99 S. Ct., 1158; Argersinger v. Hamlin, 407 U.S. 25. No imprisonment was authorized or imposed for this offense.

The fourth assignment of error is not well taken. We have found no error prejudicial to defendant in the individual issues set forth by defendant in the first four assignments of error nor do we find any prejudicial error in these issues when considered collectively as indicated by defendant.

The issue of the Third District Court of

Appeal's failure to advise the accused and convicted, standing and pleading before the Court alone, of his right to Counsel, or offering the assistance of Counsel, was not raised in the Courts below. More pressing issues were presented and raised in the Defendant/ Appellant's Memorandum of Jurisdiction to the Ohio State Supreme Court. Jurisdiction having been denied in the Ohio State Supreme Court for "failure to raise a substantial constitutional question," the issue is raised on appeal for consideration, at this juncture.

The issue of the Supreme Court for the State of Ohio's failure to advise the accused and convicted, standing and pleading before the Court alone, of his right to Counsel, or offering the assistance of Counsel, was not raised in the Courts below. The matter is before the United States Supreme Court as an issue for primary consideration.

The issue of a fair tribunal as a requisite of due process and a requisite of a fair trial is before the United States Supreme Court as an issue for primary consideration. More pressing issues were presented and raised in the Defendant/Appellant's

Memorandum of Jurisdiction to the Ohio State Supreme Court. Jurisdiction having been denied in the Ohio State Supreme Court for "failure to raise a substantial constitutional question," the issue is raised on appeal for consideration, at this juncture.

The issue of the State of Ohio's practice of condoning a Trial Court's taking judicial notice of the reliability and accuracy of radar units, and particularly the M.R.7 device in the case at bar, has been challenged from the outset as a violation of an accused individual's right to confront the evidence against him, pursuant to the Fourteenth Amendment to the United States Constitution. The arguments were made in the Trial Court, and are part of the Court file in the Defendant/Appellant's Statement of the Evidence and Proceedings, prepared and submitted to the Third District Court of Appeals, pursuant to Rule 9(C) of the Ohio Rules of Appellate Procedure. The Statement of Evidence and Proceedings was incorporated in its entirety in the Defendant/Appellant's Brief to the Third District Court of Appeals, as a componet of the Statement of the Case.

The issues were raised in specific assignments of error to the Third District Court of Appeals for the State of Ohio in the Defendant/Appellant's Brief, to wit: Arguments V through XI. The Third District Court of Appeals addressed these arguments in its Memorandum Opinion, to wit:

> Assignments of error number five, six, seven, eight, nine, ten and eleven deal with the admission into evidence of the MR7 radar results.
> There being no record of the trial proceedings before this court, there is no affirmative display of the error claimed and thus no prejudicial error to defendant.
> We parenthetically note that in State v. Staggs, Unreported Hancock County Case No. 5-76-18, decided January 26, 1977, this court stated that the reliability of the MR7 radar device would be judicially noticed thus dispensing with the necessity of expert testimony as to its nature and function or the scientific principles underlying the same.

Although the Defendant/Appellant argued that this issue was of great public interest due to the national impact the Ohio case law had effected upon other states, the Ohio State Supreme Court disregarded the argument.

The issue of whether the Defendant/Appellant was denied the equal protection under the law was first raised in the Third District Court of Appeals.

The Third District Court of Appeals in its Memorandum Opinion, held with respect to this issue:

> Defendant's argument hereunder is directed to the failure of the trial court to make a record in the trial court and to correctly settle the statement of evidence submitted to the trial court by defendant. The failure to record the trial proceedings is fully disposed of above. Since the statement of evidence was struck from the files and is thus not a part of this appeal, no prejudicial error appears from the manner in which it was settled.

Other assignments of error were presented and set forth in argument to the Third District Court of Appeals. In the interest of brevity, only the significant United States Constitutional Due Process issues have been highlighted and brought to the attention of this distinguished and honored Court. The other assignments of error as set forth in the argumentation specifically articulated in the Appellant's Brief to the Third District Court of Appeals, are significant points of law on their own merit, but for the purposes of the ~~ten~~ questions presented for this appeal to the United States Supreme Court, will serve as illustration.

STATEMENT OF THE REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION, WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT, FOR THEIR RESOLUTION

It has never been the policy of the United States to condone arbitrary and tyrannical rule, in any Court, State or Federal. The Declaration of Independence, the Constitution of the United States and the Amendments thereto evidence the premium placed on insuring that any accused be accorded the rights of fundamental fairness to protect against the deprivation of life, liberty, or property without due process of law. The presumption of innocence until proven guilty beyond a reasonable doubt is a presumption which recognizes the premium of our liberty, fought for and won against the English Crown by our country's patroits. The enumerated rights of fundamental fairness were debated and set forth, to protect against convicting the innocent. This Honorable Court through the decades has reaffirmed these propositions and the right of an accused to a fair day in Court. This Honorable Court has said:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge...not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.' Tumey v. Ohio, 273 U.S. 510, 532.. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' Offutt v. United States, 348 U.S. 11, 14. In re Murchison, 349 U.S. 133, at 136, (1955).

This case involves an offense classified by the legal term, "petty offense" within the meaning set forth in Duncan v. Louisiana, 391 U.S. 145, at 161, (1968). The penalty in this case however, does not involve any possibility of incarceration.

It is the position of this Defendant/Appellant that the Court Rules and Statutes of the State of Ohio, as they exist and are interpreted by the Courts of that State, systematically deny those who stand accused of

petty offenses wherein there is no possibility of incarceration, of "a fair trial in a fair tribunal", denying the accused Due Process of Law as mandated through the Fourteenth Amendment to the United States Constitution. The disposition of "petty offense" cases in the State of Ohio, and particularly the case at bar, reflect that justice does not satisfy even "the appearance of justice" wherein there is not the possibility that an accused will be incarcerated for the offense.

In the case at bar, the Trial Court conducted a proceeding:

> a) denying the accused a trial by jury;
> b) failing to provide any means to record the proceedings should the Defendant wish to excercise his appeal of right under the Ohio Rules of Appellate Procedure, and Ohio Statutes;
> c) failing to offer the accused or provide the accused with the assistance of accused, leaving the Defendant/accused standing before the Court alone against the State of Ohio, through its trained and licensed attorney, acting as Prosecutor;
> d) taking judicial notice of the evidence against the accused, over the Defendant's many objections;
> e) failing to advise the accused, standing alone before the Court without the assistance of Counsel, of any rights pursuant to the Constitutions of the State of Ohio or the United States, Court Rules for the State of Ohio, or rights pursuant to statute;

In the Third District Court of Appeals, the Defendant/

Appellant was denied any meaningful access:

a) only the statement of the trial court and the State of Ohio was allowed into the Public Court file as the "record" for review on appeal;
b) the Defendant/Appellant was not allowed to appear and argue the case "for the record", notwithstanding (a);
c) the Defendant/Appellant was not offered or provided the assistance of Counsel, leaving the Defendant/Appellant posed against the State of Ohio, through its trained and licensed attorney, on appeal;
d) failing to advise the accused, standing alone before the Court without the assistance of Counsel, of any rights pursuant to the Constitutions of the State of Ohio or the United States, Court Rules for the State of Ohio, or rights pursuant to statute;
e) parenthetically reaffirming the proposition of law, that a trial court may properly take judicial notice of the reliability and accuracy of radar units, and particularly the M.R.-7, dispite the many objections cited in the Appellant's Brief on Appeal to the contrary;
f) failing to disqualifying themselves from further proceeding in the matter, when the impartiality of the Appellate Judges became reasonably in dispute;
g) affirming the conviction, on what would appear to be a "silent record;"

The Supreme Court for the State of Ohio denied the

Defendant/Appellant meaningful access:

a) failing to provide the Defendant/Appellant with Counsel, or offering to provide the same, when the records reflect that at no time was such an offer or provision effected in the lower courts of the state;

b) failing to provide the Defendant/Appellant any indication that the matter had been reviewed, the Court sending to the Defendant/Appellant, an unsigned form order reflecting that the substance of Defendant/Appellant's Memorandum of Jurisdiction had not been read; c) failing to provide the Defendant/Appellant with his day in Court, on the record, to challenge the Court procedures promulgated by the Supreme Court for the State of Ohio;

The Memorandum Opinion rendered by the Third District Court of Appeals in the above entitled cause, on March 4, 1980 indicates its belief that Due Process has been accorded the Defendant/Appellant according to the mandates of Federal Constitutional Law. The Supreme Court for the State of Ohio has indicated its approval of the proceedings in this matter, stating that "no substantial constitutional questions exist."

The Defendant/Appellant brings this appeal to the attention of this Honorable Court for a "Declaration of Rights" to those charged with "Petty Offenses" wherein there is no possible incarceration as a penalty. The judicial process in the State of Ohio makes clear the importance of this Declaration. The actions of these courts indicate and reflect the deprivation of property rights without due process of law, and further reflect

the State of Ohio's insensitivity to the implanting of criminal findings upon those who come in contact with the Ohio judicial process in this light. The United States Supreme Court has not yet addressed the rights of the millions of people across our great country whose lives are affected daily through the imposition of criminal penalties for "petty offense convictions," wherein there is no possibility of incarceration. Such convictions which do not involve incarceration might to those convicted involve ramifications more serious to that individual. This Honorable Court has so stated:

> ...The practical effects of conviction of even petty offenses of the kind involved here are not to be minimized. A fine may bear as heavily on an indigent accused as forced confinement. The collateral consequences of conviction may be even more serious, as when (as was apparently a possibility in this case) the impecunious medical student finds himself barred from the practice of medicine because of a conviction he is unable to appeal for lack of funds. Moreover, the State's long term interest would not appear to lie in making access to appellate processes from even its most inferior courts depend upon the defendant's ability to pay. It has been aptly said:
>
> > "Few citizens ever have contact with the higher courts. In the main, it is the police and the lower court Bench and Bar that convey the essence of our democracy to the people.

> "Justice, if it can be measured, must be measured by the experience the average citizen has with the police and the lower courts."
> Arbitrary denial of appellate review of proceedings of the State's lowest trial courts may save the State some dollars and cents, but only at the substantial risk of generating frustration and hostility toward its courts among the most numerous consumers of justice." Mayer v. Chicago, 404 U.S. 189, at 197, (1971).

Justice Powell, in his concurring opinion, stated in Argersinger v. Hamlin, 407 U.S. 25, at 48, (1971):

> Serious consequences also may result from convictions not punishable by imprisonment. Stigma may attach to a drunken-driving conviction or a hit-and-run escapade. Losing one's driver's license is more serious for some individuals than a brief stay in jail. In Bell v. Burson, 402 U.S. 535 (1971), we said:
>
> > "Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livlihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without procedural due process required by the Fourteenth Amendment." Id., at 539.

It is the position of this Defendant/Appellant that the right to trial by jury must be evaluated by this Honorable Court with respect to "petty offenses", and particularly with respect to "petty offenses, wherein

there is no possibility of incarceration as the criminal penalty for the particular offense. Although this Honorable Court held in Duncan v. Louisiana, 391 U.S. 145, at 158, (1968) that there were no constitutional doubts about prosecuting petty crimes without extending a right to jury trial, both in Federal and State Courts, the Court observed therein:

> We sould not assert, however, that every criminal trial--or any particular trial--held before a judge alone is unfair or that a defendant may never be as fairly treated by a judge as he would be by a jury.

It is the position of this Defendant/Appellant that a trial before a judge alone in the State of Ohio, with respect to petty offenses in the State of Ohio wherein there is no possibility of incarceration as the criminal penalty for the particular offense, would be unfair, and particular reference is called to the underlying facts in the case at bar. The Duncan case, Id., does not address the situation wherein a state would fail to provide any protections to insure fundamental fairness in the absence of a trial by jury, as is the case in the State of Ohio.

It is the position of this Defendant/Appellant

that the absolute and unconditional right to a trial record must be evaluated by this Honorable Court with respect to "petty offenses", and particularly with respect to "petty offenses, wherein there is no possibility of incarceration" as the criminal penalty for the particular offense. This issue is imperative for two reasons. First, if the right to a jury trial for petty offenses wherein there is no possibility of incarceration as the penalty for such offense, then there must, as a matter of fundamental fairness, be a transcript available to the Defendant/accused for purposes of appeal. Although this Honorable Court has addressed the right to a transcript on appeal in Griffin v. Illinois, 351 U.S. 12, (1956), Draper v. Washington, 372 U.S. 487, (1963), Williams v. Oklahoma City, 395 U.S. 458, (1969), and Mayer v. City of Chicago, 404 U.S. 189, (1971), these decisions do not reflect the unmistakable and insurmountable prejudice to the convicted/appellant in the determination of what will be the "Alternative methods of reporting trial proceedings," for purposes of appeal. The papers in the case at bar substantiate the necessity

for a ruling by this Honorable Court as to the unconditional and absolute right to a trial record, for purposes of an effective appeal, with respect to petty offense cases, and particularly wherein there is no possibility of incarceration as a penalty for the offense. Second, should there be a trial court proceeding conducted, as in the case at bar, in the absence of a jury, there is nothing to stand between the accused/Defendant and an arbitrary and tyrannical court. It could hardly be said that "the appearance of justice has been satisfied." In re Murchison, 349 U.S. 133, at 136, (1955). There is nothing to insure that an accused would be accorded "fundamental fairness."

It is the position of this Defendant/Appellant that the right to Counsel in the Trial Court must be evaluated by this Honorable Court with respect to "petty offenses", and particularly with respect to "petty offenses, wherein there is no possibility of incarceration" as the criminal penalty for the particular offense. The issue has been addressed by this Honorable Court, wherein incarceration has

been a possible penalty for the offense charged. The importance of Counsel to an accused having a fair day in Court has been reaffirmed by this Honorable Court many times. This Court in Argersinger v. Hamlin, 407 U.S. 25, at 31, (1972) said:

> The assistance of counsel is often a requisite to the very existence of a fair trial. The Court in Powell v. Alabama, supra, at 68-69- a capital case-said:
>
> > "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect."
>
> In Gideon v. Wainwright, supra (overruling Betts v. Brady, 316 U.S. 455), we dealt with

a felony trial. But we did not so limit the need of the accused for a lawyer. We said:

> "In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." 372 U.S., at 344.

The court went on to say:

> We must conclude, therefore, that the problems associated with misdemeanor and petty offenses often require the presence of counsel to insure the accused a fair

> trial. Mr. Justice Powell suggest that these problems are raised even in situations where there is no prospect of imprisonment. Post, at 48. We need not consider the requirements of the Sixth Amendment as regards the right to counsel where loss of liberty is not involved, however, for here petitioner was in fact sentenced to jail. Argersinger, Supra., at 36.

In the case at bar, the Trial Judge took "judicial notice" of the evidence against the accused. It also appears from the papers constituting the record for review in this case, that knowledge of the Trial Court rules, as they existed at the time of trial, is a prerequisite to standing on equal footing with the trained and licensed lawyer, who stands ready to take advantage of those that employ him or her.

It is the position of this Defendant/Appellant that the right to Counsel on appeal to a state supreme court should be reevaluated by this Honorable Court in light of the facts in the case at bar. Although, the right to Counsel on an Appeal as of Right to a state appeals court was established, in Douglas v. California, 372 U.S. 353, at 357, ((1963), the constitutional question arises, as in the case at bar, no Counsel is offered or provided. The accused and convicted,

Defendant/Appellant is left to educate himself in the substance and procedure of the State, and do the best he or she can in representing themselves. Ross v. Moffitt, 417 U.S. 600, (1974) does not seem to apply wherein a Court of Appeals fails in its duty to afford an Appellant the opportunity to obtain Counsel.

It is the position of this Defendant/Appellant that the Fourteenth Amendment right to a "fair trial in a fair tribunal" implies the right to a judiciary who are other than biased, prejudiced, and partial to the cause. In as much as an Affidavit of Disqualification was submitted both to the Third District Court of Appeals for the State of Ohio, and to the attention of the Chief Justice for the State of Ohio pursuant to the Ohio Code of Judicial Conduct, it would seem that "justice" should have provided some forum to make such a determination. The affidavit was submitted almost seven months prior to the Third District Court of Appeals opinion in the case.

Lastly, it is the position of this Defendant/Appellant that the taking of judicial notice of the

reliability and accuracy of radar units, and particularly the M.R.-7, in the State of Ohio, as sanctioned by the Supreme Court for that State, violates evidential principles of what a trial court may properly take judicial notice of; and further denies the accused the right to confront and challenge the credibility and reliability of the evidence offered by the Prosecution, in violation of all notions of fundamental fairness as set forth in the Due Process of Law Provision of the Fourteenth Amendment to the Constitution of the United States. This matter is important for this Court's scrutiny, because of its harsh impact on those alleged "petty offenders" who can not afford to challenge the State, within the State of Ohio, and around the United States. It is worth making the observation that Wisconsin prosecutors and the lower courts in the State of Wisconsin adopted the proposition of evidence law that Trial Courts might properly take judicial notice of the accuracy and reliability of the radar equipment used to apprehend motorists. The Wisconsin State Supreme Court struck down this proposition of law as adopted in the lower

Courts from State v. Shelt, 46 Ohio App.2d 115, 346 N.E.2d 345, (1976), in State of Wisconsin v. Hanson, 270 N.W.2d 212. The Wisconsin Supreme Court observed:

> To this court's knowledge, the State of Ohio is the only jurisdiction in the nation which has permitted the taking of judicial notice as to the reliability and accuracy of a moving radar unit. State of Wisconsin v. Hanson, 270 N.W.2d 212, at 216, (1978).

This appeal to this Honorable Court is brought as a "Declaration of Rights for those alleged 'petty offenders who do not face the possibility of incarceration as a penalty for the offense." This Honorable Court has mentioned these members of society in collateral reference to other matters, but not directly on the merits. As this Honorable Court does not deal in hypothetical cases, this appeal presents the opportunity to address the millions of our country's citizens who come in contact with our judicial process for minor matters. The Supreme Court for the State of Wisconsin put it this way:

> For the average law abiding American citizen, minor traffic offenses constitute the only contact such a person will have with the law enforcement and judicial systems. Public confidence rests upon the fairness of such proceedings. Wisconsin v. Hanson,

Supra.

This Defendant/Appellant believes that the opportunity for this Honorable Court to address the issues relating to "petty offenses", and particularly wherein there is no possible incarceration as a penalty for the offense, is of great moment. A "Declaration of Rights" is imperative so that Courts around the country will have notice and direction with respect to the millions of consumers of American justice who appear for "just the 'petty offenses.'" Above all, this Declaration of Rights is imperative to those accused of these petty offenses. Appeal and appeal, and appeal is beyond the means, and capability of most of these individuals. The burdens of appeal are tremendous, in time, energy, and money.

> "Sir, we have done everything that could be done, to avert the storm which is now coming on. We have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the throne, and have implored its interposition to arrest the tyrannical hands of the ministry and Parliament. Our petitions have been slighted; our remonstrances have produced additional violence and insult; our supplications have been disregarded; and we have been spurned, with contempt, from the foot of the throne. In vain, after these things, may we indulge the fond hope of peace and reconciliation. There is no longer any room for hope. If we wish

> to be free-if we mean to preserve
> inviolate those inestimable privileges
> for which we have been so long contending-
> if we mean not basely to abandon the noble
> struggle in which we have been so long
> engaged, and which we have pledged ourselves
> never to abandon until the glorious object of
> our contest shall be obtained, we must fight!
> I repeat it, sir, we must fight! An appeal
> to arms and to the God of Hosts is all that
> is left us!
> They tell us, sir, that we are weak; unable
> to cope with so formidable an adversary.
> But when shall we be stronger?"

In the words of the great patriot, Patrick Henry, I come to Washington, to this Honorable Court, with this Appeal. The State of Ohio has wagered that I would tire, or become too weary too continue the struggle for principle. The State of Ohio has wagered that the Defendant/Appellant, who is not trained and not licensed in the laws and court procedures of the State of Ohio, and the Supreme Court of the United States, would procedurally be eliminated. Lastly, the State of Ohio has wagered that this Honorable Court will not hear such a case. If this be so, the State of Ohio shall prevail. The time has come for a "Declaration of Rights" for alleged "petty offenders' for which offense there is no possibility of incarceration," so as to accord these citizens the right to "a fair trial in a fair tribunal." On these words do I respectfully submit this statement.

Stephen Paul Kaun

80-322

Supreme Court, U. S.
FILED
AUG 29 1980
MICHAEL RODAK, JR., CLERK

Case No._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

STEPHEN PAUL KORN
Appellant

-v-

THE STATE OF OHIO
Appellee

ON APPEAL FROM THE
COURT OF APPEALS OF OHIO,
MARION COUNTY

APPENDIX TO JURISDICTIONAL STATEMENT

STEPHEN PAUL KORN
17615 Adrian Road
Southfield, Michigan
48075
1-313-353-1240

THE SUPREME COURT OF OHIO

THE STATE OF OHIO
CITY OF COLUMBUS
STATE OF OHIO,
Appellee,

vs.

Stephen Paul Korn,
Appellant.

1980 Term
To wit: June 20, 1980
No. 80-638
Appeal from the Court of Appeals for Marion County

This cause, here on appeal as of right from the Court of Appeals for Marion County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Marion County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this _____ day of Jul 1 1980 19___

(Thomas L. Startzman Clerk
(Sam J. Adkins Deputy

IN THE COURT OF APPEALS OF THE
THIRD APPELLATE JUDICIAL DISTRICT
OF OHIO

STATE OF OHIO; PLAINTIFF-APPELLEE; v.
STEPHEN PAUL KORN, DEFENDANT-APPELLANT.

MEMORANDUM OPINION

(CASE NUMBER 9-79-7 - Decided March 4, 1980)

APPEAL: Court of Appeals for Marion County.

MR. STEPHEN PAUL KORN, In Propria Persona, Appellant.

MR. JONATHAN WILLIAMSON, Assistant Law Director, for Appellee.

PER CURIAM. This is an appeal from a judgment of conviction and sentence entered by the Marion Municipal Court.

Defendant, appellant herein, was charged with a violation of R.C. 4511.20 entitled "Speed Limits," the express allegation of the Traffic Ticket being "speed over limit 71 MPH in 55 MPH zone."

Defendant entered a plea of not guilty and the matter was tried to the court with defendant representing himself. The trial resulted in a judgment of guilty and the assessment of a fine in

the amount of twenty-five dollars plus costs.

Defendant is appealing from the judgment.

He asserts that the appeal involves two areas of concern, the first being that of Due Process and Due Course of Law violations with respect to the proceedings in the lower court and the second involving the findings of the lower court with respect to a purported violation of R.C. 4511.21.

Defendant sets forth nineteen assignments of error in his brief filed herein.

We first observe that no transcript was made of the proceedings at trial.

Defendant transmitted to the clerk of the court of appeals for filing in the appellate court a statement of evidence pursuant to App. Rule 9(C) which was struck from the record by this court for the reason that the statement had not been settled and approved by the trial court. Some forty days after the remaining portion of the record had been transmitted to the court of appeals defendant sought leave to file the statement of evidence which this court denied.

App. Rule 9(A) provides: "The original papers and exhibits thereto filed in the trial court, the transcript of the proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases."

The transcript of trial proceedings may be in the form of a statement of the evidence or proceedings when no report of the evidence at trial was made. App. Rule 9(C).

There being no transcript of the proceedings at trial and no statement of evidence in lieu thereof, the record before this court consists of the original papers and certified copies of the docket and journal entries.

A court of appeals is bound by the record before it and may not consider facts extraneous thereto. Paulin v. Midland Mutual Life Ins. Co., 37 Ohio St. 2nd 109.

It is also incumbent upon the appellant in any appeal to affirmatively display the error of which he

complains.

With this in mind we come to a consideration of defendant's assignments of error.

The first four assignments of error will be considered together. They are in necessary part as follows:

> "1. The Trial Court erred in failing to honor the Defendant-Appellant's demand for a trial by jury, wherein the proceeding was criminal, and the accused was not offered the Constitutional safeguards of fundamental fairness, to wit:
>
> "a) No record was taken of the trial proceedings, to protect the Defendant-Appellant in the absence of a jury, from arbitrary and tyrannical rule, assuring his right to an effective appeal, and maintaining the integrity of the Courts;
>
> "b) At no time was the accused, standing before the Court alone, in the absence of a jury, and in the absence of a trial record, advised of any Constitutional or Statutory rights;
>
> "c) At no time was the accused advised of his right to Counsel, or offered the assistance thereof;
>
> "denying the accused the unqualified protection against arbitrary and tyrannical rule as set forth in the language and spirit of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Section 5, Article I, Section 10, and Article I, Section 16 of the Constitution for the State of Ohio. * * *

"2. The Trial Court erred in failing to use a recording device to preserve a record of the trial proceedings, wherein the proceeding was criminal, and the accused was tried in the absence of a jury, denying the accused the unqualified protection against arbitrary and tyrannical rule, as set forth in the language and spirit of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Section 5, Article I, Section 10, and Article I, Section 16 of the Constitution for the State of Ohio. * * *

"3. The Trial Court erred in failing to prepare a fair, unbiased, impartial, bona fide Settlement and Approval of the Statement of Evidence and Proceedings, and the Objections thereto, submitted by the State and the accused, wherein the proceeding was criminal, and the accused was tried in the absence of a jury, and in the absence of a record of the proceedings, denying the accused the unqualified protection against arbitrary and tyrannical rule, as set forth in the language and spirit of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Section 5, Article I, Section 10, and Article I, Section 16 of the Constitution for the State of Ohio. * * *

"4. The Trial Court erred in failing to advise the accused, standing before the Court alone, in the absence of a jury, and in the absence of a trial record, of any Constitutional Rights, Statutory Rights, or Rights pursuant to Court Rules designed to insure that an accused be afforded a just and fair hearing, denying the accused the Constitutional safeguards of fundamental fairness, to wit: * * *"

R.C. 2945.17 provides that "At any trial, in any court, for the conviction of any statute of this state,

or of any ordinance of any municipal corporation, except in cases in which the penalty involved does not exceed a fine of one hundred dollars, the accused has the right to be tried by a jury."

In Cheff v. Schnakenberg, 384 U.S. 373, the Supreme Court held that, in a prosecution for a petty offense, a defendant was not entitled to a jury trial.

A "petty offense" is defined by 18 U.S.C. 1, as any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500 or both.

The Court in Duncan v. Louisiana, 391 U.S. 145, reaffirmed the Cheff holding, saying at page 160, "(s)o-called petty offenses were tried without juries both in England and in the Colonies and have always been held to be exempt from the otherwise comprehensive language of the Sixth Amendment's jury trial provisions. * * * the possible consequences to defendants from convictions for petty offenses have been thought insufficient to outweigh the benefits to efficient law enforcement and simplified judicial administration resulting from the availability of speedy and inexpensive nonjury adjudications."

In Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 220, the Court further indicated that, although the Court had not had occasion to "state precisely where the line falls between punishments that can be considered 'petty' and those that cannot be * * * it is clear that a six-month sentence is short enough to be 'petty'."

Criminal Rule 2 defines a "serious offense" as a felony, or a misdemeanor for which the penalty prescribed by law includes confinement for more than six months and a "petty offense" as a misdemeanor other than a serious offense.

R.C. 4511.99 establishes a first violation of R.C. 4511.21 as a minor misdemeanor, the penalty for which is set by R.C. 2929.21(D) as "not more than one hundred dollars."

We conclude that the provisions of R.C. 2945.17 are well within the guidelines of Cheff v. Schnakenberg, Duncan v. Louisiana, and Dyke v. Taylor Implement Mfg. Co., supra, and that no prejudicial error resulted from the trial court's refusal to grant defendant a jury trial.

Criminal Rule 22 provides that:

> "In serious offenses cases all proceedings shall be recorded.
>
> "In petty offense cases all waivers of counsel required by Rule 44(B) shall be recorded, and if requested by any party all proceedings shall be recorded.
>
> " * * *"

There is nothing in the record before us to indicate that defendant had requested that the proceedings be recorded in accordance with Criminal Rule 22. See State v. Gartana, 44 Ohio App. 2nd 233.

However, defendant further asserts that by virtue of a silent record it cannot be affirmatively shown that he was advised of his constitutional rights nor can a waiver of such rights be assumed from such a record.

He relies on Cleveland v. Whipkey, 29 Ohio App. 2nd 99, decided January 27, 1972, for the proposition that the record must reveal a compliance with all constitutional safeguards.

We first note that this case deals with a guilty plea and, secondly, in the later case of East Cleveland v. Dragonette, 32 Ohio St. 2nd 147, a per curiam

opinion, also involving a guilty plea the Supreme Court said at pages 148 and 149:

> " * * * the record before the Court of Appeals consisted only of the transcript of the Municipal Court's docket and journal entries, and that transcript failed to demonstrate the error complained of, i.e., error in accepting defendant's plea of guilty. This being so, there is nothing presented by defendant upon which a reviewing court can determine whether error was committed by the trial court.
>
> " * * * A party, having the duty of instituting the preparation of a record for the purpose of appeal, may not siti idly by and then predicate reversal upon the basis of a 'silent record.'"

No error prejudicial to defendant resulted from the lack of a record being taken in the trial court absent a request therefor by defendant.

The third assignment of error asserts unconstitutionality of App. Rules 9 and 10 and Local Rule 3 of this court in that they place an undue burden upon defendant in perfecting his appeal by requiring him to prepare a statement of the evidence in the absence of a transcript of the proceedings at trial.

Local Rule 3 of this court merely reasserts the requirements of R.C. 2505.08 as to the filing of a praecipe and a deposit of fees with the clerk and sets

forth the form of the praecipe required.

App. Rule 9 defines and determines the record on appeal and App. Rule 10 sets forth the time and method of transmitting the record to the clerk of the court of appeals.

There is no constitutional right to appeal under the U.S. Constitution (Ross v. Moffit, 417 U.S. 600, 610-611) nor does the Ohio Constitution guarantee such a right. Middletown v. City Commission, 138 Ohio St. 596, 603.

The state may prescribe rules as to appellate procedure and no violation of constitutional law is involved in a court's insistence that a statutory right of appeal be excerised according to the lawful rules of the court. 16 Am. Jur. 2nd 990, Constitutional Law, Section 584.

We find no constitutional issue involving the rules of appellate procedure insofar as they establish procedure for preparing and transmitting the appellate record and overrule defendant's third assignment of error.

The fourth assignment of error deals with the

failure of the trial court to advise the accused of his right to counsel or to offer him the assistance of counsel.

It is highly questionable that this issue is before this court as nothing in the record affirmatively shows that the trial court failed to so advise defendant.

However, in any event, no prejudicial error resulted therefrom.

Criminal Rule 44(B) provides that "Where a defendant charged with a petty offense is unable to obtain counsel, the court may assign counsel to represent him. When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon him, unless after being advised by the court, he knowingly, intelligently, and voluntarily waives assignment of counsel."

The record before us would not indicate any inability on the part of defendant to obtain counsel. On the contrary according to the original papers, five days following the arrest, defendant's father, an attorney at law, wrote to the clerk of the court seeking

information as to whether the matter could be resolved at a pre-trial conference or by mail, thus indicating that defendant had counsel. On the same date defendant forwarded to the court a demand for jury trial and a statement to the clerk of the court asking the clerk to "please enter my appearance as defendant in the above entitled cause in pro per."

The latter statement can only be reasonable interpreted to mean that defendant was entering his appearance in propria persona, i.e., in his own person or behalf without counsel. See Ballentine's Law Dictionary, Third Edition (1969) page 633.

The constitutional right to counsel only extends to those instances wherein imprisonment may be imposed. Scott v. Illinois, U.S., 99 S. Ct., 1158; Argersinger v. Hamlin, 407 U.S. 25. No imprisonment was authorized or imposed for this offense.

The fourth assignment of error is not well taken.

We have found no error prejudicial to defendant in the individual issues set forth by defendant in the first four assignments of error nor do we find any prejudicial error in these issues when considered

collectively as indicated by defendant.

Assignments of error number five, six, seven, eight, nine, ten and eleven deal with the admission into evidence of the MR7 radar results.

There being no record of the trial proceedings before this court, there is no affirmative display of the error claimed and thus no prejudicial error to defendant.

We parenthetically note that in State v. Staggs, Unreported Hancock County Case No. 5-76-18, decided January 26, 1977, this court stated that the reliability of the MR7 radar device would be judicially noticed thus dispensing with the necessity of expert testimony as to its nature and function or the scientific principles underlying the same.

Assignments of error numbers twelve, thirteen, fourteen, and fifteen are as follows:

> "12. The Trial Court erred in failing to allow the accused his Constitutional right to challenge the Constitutionality of a law in a Court of law, specifically, R.C. 4511.21 * * *
>
> "13. The Trial Court erred in its erroneous finding that the Defendant-Appellant's speed was greater than reasonable or proper under the circumstances as set forth in R.C. 4511.21

"14. The Trial Court erred as the Defendant-Appellant was compelled to be a witness against himself, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and in violation of the Ohio Constitution, Article I, Section 10, in the absence of a jury, in the absence of a record, and in the absence of Counsel. * * *

"15. The Trial Court erred in denying the Defendant-Appellant's objection that he was not properly charged with particularity and in accordiance with the statutory provisions of R.C. 4511.21."

These assignments assert error which could only be displayed by reference to the trial court transcript which is not before us and must, therefore, be overruled.

Assignment of error number sixteen:

"16. The Trial Court erred in denying the accused the equal protection under the laws of the State of Ohio, in contravention of the Fourteenth Amendment of the United States Constitution, and Article I, Section 2 of the Constitution for the State of Ohio."

Defendant's argument hereunder is directed to the failure of the trial court to make a record in the trial court and to correctly settle the statement of evidence submitted to the trial court by defendant.

The failure to record the trial proceedings is fully disposed of above. Since the statement of evidence was struck from the files and is thus not a

part of this appeal, no prejudicial error appears from the manner in which it was settled.

Assignments of errors numbers seventeen, eighteen, and nineteen as follows:

> "17. The Trial Court erred in denying the Defendant-Appellant's Motion for a Directed Verdict, the State having failed to bear its statutory burden of proof, pursuant to R.C. 2938.08, R.C. 2901.05, and the Common Law burden thereof.
>
> "18. The Trial Court erred in conducting a trial of an accused in violation of R.C. 2901.04.
>
> "19. The Trial Court erred in finding an innocent person guilty in violation of conscience, law, and fact."

These assignments of error go to the weight and sufficiency of evidence and the conduct of the trial and cannot be reviewed in the absence of a transcript of the trial proceedings.

Additionally, assignments of error numbers eighteen and nineteen were not argued and pursuant to Appellate Rule 12, may be disregarded.

Finding no error prejudicial to defendant as assigned and argued, we must affirm the judgment of the trial court.

Judgment affirmed.

GUERNSEY, P.J., COLE AND MILLER, J.J., concur.

IN THE COURT OF APPEALS FOR MARION COUNTY, OHIO
THIRD APPELLATE DISTRICT

STATE OF OHIO,
Plaintiff-Appellee,

vs.

STEPHEN PAUL KORN,
Defendant-Appellant.

Case No. 9 79-7

TRIAL COURT'S SETTLEMENT AND APPROVAL OF THE APPELLANT'S STATEMENT AND APPELLEE'S OBJECTIONS

This matter came on to be heard on the defendant's plea of not guilty to a charge of driving 71 miles per hour in a 55 mile per hour zone, on U. S. Route 23, passing through Marion County, Ohio on November 25, 1978.

On behalf of the State, Officer Seigler of the Ohio State Patrol testified that as he approached and met the defendant's auto he observed the defendant to be exceeding the speed limit of 55 m.p.h., his judgment being confirmed by the radar and supported by his observation that the defendant has just overtaken and passed six other autos in succession. He testified

further that the MR 7 radar device he was using indicated a speed of 71 m.p.h., in the moving mode, that there were no vehicles or objects between him and the defendant's auto and that the defendant's auto was nearest the cruiser.

The officer testified further that he had eleven years service with the State Highway Patrol, that he had received standard formal instruction in use of the moving radar, that he holds a certificate of training completion for the MR 7 and another type radar, that he was experienced in its use and that he has served as an instructor of other patrolmen in the use of the MR 7 moving radar device.

The officer explained the operation of the device and testified that he had operated it according to the manufacturer and Highway Patrol instructions, and testified that it was in proper working order when he used it to verify defendant's speed.

He explained the manner in which the device is calibrated, or tested, and that he had properly calibrated it shortly before its use that day. Such

calibration included the use of tuning forks. Each of such forks is marked with the miles per hour which the radar device should register when the struck fork is held near it. If the radar does not register the same as the m.p.h.'s called for by the particular fork then the machine is not used. He found no difference between the forks used and the radar read-out. In the moving mode test two such forks, marked with different m.p.h.'s are struck at the same time and held to the device. The MR 7 should then properly register the difference between the two forks. If the read-out is not the difference between the forks, the radar device is not used. The officer testified that he had made this test and that the radar reading was correct with the difference between the forks.

The defendant objected to the admission into evidence of the radar reading of 71 m.p.h., on the ground there was no expert testimony concerning the internal construction and mode of operation of the device. The trial court admitted the result of the radar read-out, judicially noticing that the MR 7

moving radar device, using as it does sound and scientific principles, is now acceptible and its results admissible in evidence in evidence without independant expert testimony. The court found further that the particular device was in good working condition that day and that the officer was qualified by training and experience to operate the machine.

The defendant in support of his contention referred to State v. Shelt, 46 Ohio App. 2nd 115, without reference to the announcement by the judges of that court that henceforth it could be judicially noticed that the MR 7 moving radar device would be acceptable without expert testimony, present proof of its proper operation and of the qualification of the operator.

The defendant challenged the constitutionality of the Ohio speed law, R.C. 4511.21, as being unconstitutionally vague. The judge disallowed the challenge.

The defendant complained further that there was no evidence that the speed charged was unreasonable

for the time and place, the speed charged being 71 m.p.h. in a 55 m.p.h. zone. The judge explained to him the absolute nature of the 55 m.p.h. speed limit in Ohio.

The defendant complained too, that the traffic ticket failed to state the paragraph of R.C. 4511.21 under which he was charged. The objection was not sustained.

A motion for directed verdict at the conclusion of the State's case was overruled.

The defendant testified and admitted on cross-examination that he was exceeding the speed limit at the time the officer observed him.

Defendant insisted he was on Route I-75 rather than Route 23 when cited.

The trial lasted approximately an hour and a half.

The defendant was found guilty, was inquired of as to further statement and was fined $25.00 and costs, payment of which was deferred pending appeal. The defendant at no time requested a record be taken.

The above statement of the essential evidence and procedure constitutes the trial court's settlement and approval. Any of appellant's statements which are inconsistent with or contrary to the above are disapproved.

Charlton Myers
JUDGE

IN THE MARION MUNICIPAL COURT FOR MARION COUNTY, OHIO

STATE OF OHIO,
PLAINTIFF, CASE NO. 78 TRD 11,347

VS.

STEPHEN PAUL KORN, JUDGMENT ENTRY
DEFENDANT

This day being the 8th day of February, 1979, this cause came on for trial based upon a complaint filed November 27, 1978, alleging the defendant had violated Section 4511.21 of the Ohio Revised Code, the same being a charge of Speed, and the defendant's plea of "Not Guilty."

Defendant appeared without counsel and the State of Ohio was represented by Jon Williamson, Police Prosecutor.

Witnesses were sworn and testimony given and the Court made a finding of guilty.

WHEREFORE, the defendant, having made such statement as he wished to make after verdict and before sentence, was fined the sum of twenty-five dollars ($25.00) and court costs.

Charlton Myers
JUDGE

APPROVED:

Jonathan Williamson
Prosecutor

FILED
MAR 14 1979
MARION MUNICIPAL COURT

IN THE UNITED STATES SUPREME COURT
ON APPEAL FROM A JUDGMENT
OF THE SUPREME COURT
FOR THE STATE OF OHIO

STEPHEN PAUL KORN
Defendant/Appellant

-v- Case #_____

THE STATE OF OHIO
Plaintiff/Appellee

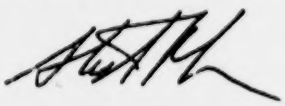
NOTICE OF APPEAL

Noting that a fair trial in a fair tribunal is a basic requirement of due process, and stating that the Defendant, STEPHEN PAUL KORN, has been denied both a fair trial and a fair tribunal in the Trial Court, the Court of Appeals, and the Supreme Court for the State of Ohio, notice is hereby given that STEPHEN PAUL KORN appeals the above entitled cause, from the judgment rendered by the Supreme Court for the State of Ohio, on June 20, 1980, bearing Ohio

State Supreme Court number 80-638. This appeal to the United States Supreme Court is taken under the authority of 28 U.S.C.A. 1257(2).

The notice of appeal was filed on August 21, 1980, pursuant to Rule 28.2 of the Rules for the Supreme Court of the United States, in the Third District Court of Appeals for the State of Ohio, the Supreme Court for the State of Ohio, and with the United States Supreme Court.

Respectfully submitted by



Stephen P. Korn
Defendant/Appellant

Stephen P. Korn
17615 Adrian Road
Southfield, Michigan 48075
1-313-353-1240

AFFIDAVIT OF SERVICE

STATE OF MICHIGAN)
COUNTY OF OAKLAND) SS:

Stephen P. Korn, being duly sworn, deposes and says that on the 28th day of August, 1980, he placed in the United States Mail, postage prepaid and first class, three copies of the Appendix to the Jurisdictional Statement, and three copies of the Affidavit of Service, attached thereto, properly addressed to the attorney for the Plaintiff/Appellee, to wit, The State of Ohio, Jonathan Williamson, Assistant Law Director, City of Marion Ohio, 233 West Center Street, Marion, Ohio 43302.

Respectfully submitted by

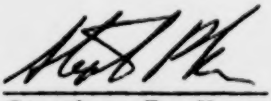
Stephen P. Korn
Defendant/Appellant

Subscribed and sworn to before me
this 28th day of August, 1980.

Monte M. Korn
Notary Public, Oakland County,
Michigan
My commission expires 8/23/81

This Appendix to Jurisdictional Statement

is respectfully submitted by:



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